



LEAGUE OF NATIONS

**RECORDS OF THE  
CONFERENCE FOR THE SUPPRESSION OF THE  
ILLICIT TRAFFIC IN DANGEROUS DRUGS**

(Geneva, June 8th to 26th, 1936)

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**TEXT OF THE DEBATES**

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GENEVA. 1936

# CONFERENCE FOR THE LIMITATION OF THE MANUFACTURE OF NARCOTIC DRUGS

(Geneva, May 27th-July 13th, 1931)

Statistics of the Manufacture of Narcotic Drugs, 1925-1928 : Report prepared by Dr Anselmino at the Request of the Secretariat. (Ser. L o N. P. 1930.XI.4) .....	6d.	\$0.15
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(Bangkok, November 9th to 27th, 1931.)

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**RECORDS OF THE  
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**TEXT OF THE DEBATES**

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**TEXT OF THE DEBATES**

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LIST OF MEMBERS OF THE DELEGATIONS ACCREDITED BY THEIR GOVERNMENTS TO PARTICIPATE IN THE WORK OF THE CONFERENCE FOR THE SUPPRESSION OF ILLICIT TRAFFIC IN DANGEROUS DRUGS.

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AFGHANISTAN

*Delegate :*

His Excellency General MOHAMED OMER Khan, Delegate to the Assembly of the League of Nations, Deputy Permanent Delegate to the League of Nations.

UNITED STATES OF AMERICA

*Delegates :*

Mr. Stuart J. FULLER, Assistant Chief of the Division of Far Eastern Affairs, Department of State, Representative of the United States of America on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

Mr. Harry J. ANSLINGER, Commissioner of Narcotics of the Treasury Department.

*Legal Adviser :*

Mr. Frank X. WARD, Assistant Legal Adviser of the Department of State.

AUSTRIA

*Delegates :*

His Excellency M. Emerich PRÜGL, Permanent Representative to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

Dr. Bruno SCHULTZ, former Vice-Président of the Vienna Police, Representative of Austria on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

UNITED STATES OF BRAZIL

*Delegate :*

M. Jorge LATOUR, Secretary of Legation.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

and all parts of the British Empire which are  
not separate Members of the League of Nations.

*Delegates :*

Mr. Oscar Follett DOWSON, C.B.E., Legal Adviser to the Home Office.

Major William Hewett COLES, D.S.O., Representative of the United Kingdom on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

BULGARIA

*Delegates :*

His Excellency M. Nicolas MONTCHILOFF, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

M. Eugène SILIANOFF, Secretary of the Permanent Delegation to the League of Nations and Secretary of the Legation in Berne.

CANADA

*Delegate :*

Colonel C. H. L. SHARMAN, C.M.G., C.B.E., Chief of the Narcotic Division of the Department of Pensions and National Health and Representative of Canada on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

*Secretary :*

Mr. Alfred RIVE, Secretary to the Canadian Advisory Officer, Geneva.



## CHILE

*Delegate :*

M. FRANCISCO HERNANDEZ JIMENEZ, Head of the Nutrition and Drugs Section of the Ministry of Health.

## CHINA

*Delegate :*

His Excellency Dr. Hoo Chi-Tsai, Director of the Permanent Office of the Delegation to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

*Substitute :*

M. CHEN Ting, First Secretary of the Permanent Office of the Delegation to the League of Nations.

*Secretary :*

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M. HOLGER OLUF QUISTGAARD BECH, First Secretary of the Permanent Delegation to the League of Nations.

## EGYPT

*Delegate :*

M. EDGAR GORRA, Royal Adviser, " Directeur du contentieux de l'État ", Alexandria.

## ECUADOR

*Delegate :*

M. ALEJANDRO GASTELÚ CONCHA, Secretary of the Permanent Delegation to the League of Nations, Consul-General of Ecuador in Geneva.

## SPAIN

*Delegate :*

M. JULIO CASARES, Representative of Spain on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

*Legal Adviser :*

M. MANUEL LOPEZ REY, Professor of Penal Law.

## FRANCE

*Delegate :*

His Excellency M. DE REFFYE, Minister Plenipotentiary, " Sous-Directeur du contentieux et des chancelleries " at the Ministry of Foreign Affairs.

*Substitute :*

M. GASTON BOURGOIS, Consul-General of France.

## GREECE

*Delegate :*

His Excellency M. RAOUL BIBICA-ROSETTI, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

*Substitute :*

M. ALEXANDRE CONTOUMAS, First Secretary of the Permanent Delegation to the League of Nations.

## HONDURAS

*Delegate :*

His Excellency Dr. Julian LÓPEZ PINEDA, Permanent Delegate to the League of Nations, Chargé d'Affaires in Paris.

## HUNGARY

*Delegate :*

His Excellency M. László DE VELICS, Chief of the Delegation to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

*Substitute :*

M. László BARTOK, First Secretary of Legation at the Permanent Delegation to the League of Nations.

## INDIA

*Delegate :*

Gordon Sidney HARDY, Esq., C.I.E., I.C.S., Vice-Chairman of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## IRAQ

*Delegate :*

Sahib Bey NAJIB, Head of the Permanent Delegation to the League of Nations, Councillor of Legation.

## IRISH FREE STATE

*Delegate :*

Mr. Francis Thomas CREMINS, Permanent Delegate to the League of Nations.

## JAPAN

*Delegate :*

His Excellency M. Massa-aki HOTTA, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

*Experts :*

M. Unji KONNO, Technical Expert of the Tokio Hygienic Laboratory.

M. Morikatsu INAGAKI, Expert attached to the Foreign Office.

*Secretaries :*

M. Yoshiro SUGITA, Secretary of the Department of Overseas Affairs.

M. Bushichiro OTAKE, Secretary of the Department of Justice.

M. Kumao NISHIMURA, Second Secretary of the Embassy in Paris.

## LIECHTENSTEIN

*Delegate :*

M. Camille GORGÉ, Counsellor of Legation, Chief of the League of Nations Section of the Swiss Federal Political Department.

*Expert :*

M. E. SCHEIM, Assistant to the Police Division, Swiss Federal Department of Justice and Police.

## UNITED STATES OF MEXICO

*Delegate :*

M. Manuel TELLO, First Secretary of the Mexican Foreign Service, Representative of Mexico on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## NICARAGUA

*Delegate :*

His Excellency M. Francisco Tomás MEDINA, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

## NORWAY

*Delegate :*

M. Einar MASENG, Permanent Delegate to the League of Nations.

## PANAMA

### *Delegate .*

Dr. Ernesto HOFFMANN, Permanent Delegate to the League of Nations.

## THE NETHERLANDS

### *Delegates :*

M. J. H. DELGORGE, Adviser of the Government of the Netherlands on international opium questions and Netherlands Representative on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

Dr. J. R. M. VAN ANGEREN, Director, Chief of the Police Section at the Ministry of Justice.

### *Substitute and Secretary :*

Jonkheer G. BEELAERTS VAN BLOKLAND, Assistant Editor to the Ministry of Foreign Affairs.

## PERU

### *Delegate :*

M. Enrique TRUJILLO BRAVO, Engineer.

## POI,AND

### *Delegate :*

His Excellency Dr. Witold CIODŹKO, former Minister of Public Health, Chairman of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

### *Technical Adviser .*

M. Kasimierz TREBICKI, First Secretary at the Delegation to the League of Nations.

## PORTUGAL

### *Delegates .*

His Excellency Dr. Augusto DE VASCONCELLOS, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

His Excellency Professor José CAEIRO DA MATTA, Rector of the University of Lisbon.

### *Secretary .*

M. Henrique DA GUERRA QUARESMA VIANNA, Chargé d'Affaires to the League of Nations, Councillor of Legation.

## ROUMANIA

### *Delegate :*

His Excellency M. Constantin ANTONIADE, Envoy Extraordinary and Minister Plenipotentiary to the League of Nations.

### *Substitute :*

M. Dino CANTEMIR, Secretary of the Delegation to the League of Nations.

## SIAM

### *Delegate :*

His Excellency Phya RAJAWANGSAN, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James.

### *Substitute :*

Luang BHADRAVADI, Secretary of Legation at the Legation in London.

### *Secretary :*

Luang CHAMNONG-DITHAKAR, Secretary of Legation at the Legation in London.

## SWITZERLAND

### *Delegate :*

M. Camille GORGÉ, Counsellor of Legation, Chief of the League of Nations Section at the Federal Political Department.

### *Expert :*

M. E. SCHEIM, Assistant to the Police Division, Federal Department of Justice and Police.

## CZECHOSLOVAKIA

*Delegate :*

Dr. Antonín KOUKAL, Adviser at the Ministry of Justice.

## TURKEY

*Delegate :*

M. Numan Talih SEYMEN, Consul-General at Geneva.

## UNION OF SOVIET SOCIALIST REPUBLICS

*Delegate :*

M. Georges LACHKEVITCH, Legal Adviser at the People's Commissariat for Foreign Affairs.

## URUGUAY

*Delegates :*

His Excellency M. Victor BENAVIDES, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

His Excellency Dr. Alfredo DE CASTRO, Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians and to Her Majesty the Queen of the Netherlands, Representative of Uruguay on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## UNITED STATES OF VENEZUELA

*Delegate :*

His Excellency M. Manuel AROCHA, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

## YUGOSLAVIA

*Delegate :*

His Excellency Dr. Ivan SOUBBOTITCH, Permanent Delegate to the League of Nations.

*Experts :*

M. Bocho DJORDJEVITCH, Secretary to the Royal Ministry of Trade and Industry.

Dr. Vladimir MANOILOVITCH, Secretary of the Permanent Delegation to the League of Nations.

*Participating at the Conference as Observers :*

## FINLAND

M. Helge VON KNORRING, First Secretary of Legation.

## LATVIA

M. Kārlis KALNINŠ, First Secretary of Legation.

*Participating at the Conference in an Advisory Capacity and as Experts :*

### *International Criminal Police Commission :*

Mr. Norman KENDAL, C.B.E., Assistant Commissioner of the Metropolitan Police, London.

Dr. Bruno SCHULTZ, former Vice-President of the Vienna Police, Representative of Austria on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

The Council of the League of Nations appointed as President of the Conference :

M. Joseph LIMBURG, Member of the Council of States of the Netherlands.

The Conference has appointed as Vice-President :

M. DE REFFYE, Minister Plenipotentiary, " Sous-Directeur du contentieux et des chancelleries " at the Ministry of Foreign Affairs of the French Republic.

The functions of Secretary-General to the Conference were assumed by :

M. Eric Einar EKSTRAND, Director of the Opium Traffic and Social Questions Sections, representing the Secretary-General of the League of Nations.



## FIRST MEETING

*Held on Monday, June 8th, 1936, at 11 a.m.*

*President : M. LIMBURG.*

### 1. Opening of the Conference.

The PRESIDENT spoke as follows :

In its report of May 24th, 1933, the Advisory Committee on Traffic in Opium and Other Dangerous Drugs, acting under the Assembly resolution of September 25th, 1931, submitted to the Council draft articles which might, in its opinion, be suitably included in an international convention for the suppression of the illicit traffic in dangerous drugs. The object the Committee had in view was to render more effective the application of the provisions of the international Conventions relating to opium and dangerous drugs and to facilitate the suppression of the illicit traffic in these substances.

Three matters, in particular, impeded the Committee's efforts : (1) in a number of countries, the penalties provided for contravening the laws which had been enacted to give effect to the international Conventions were inadequate; (2) in the majority of countries, no provision was made for punishing persons who arranged or procured the smuggling of opium and other narcotic drugs; (3) in many countries, no provision was made for the extradition of offenders.

The Advisory Committee, in order to meet these difficulties which prevented it from dealing effectively with the illicit traffic, succeeded in preparing draft articles which might be suitably included in an international convention.

In accordance with the Assembly resolution of September 25th, 1931, this preliminary draft Convention was communicated to the Governments of the Members of the League and to non-member States.

The various Governments put forward valuable observations and suggestions, which led to the revision of this preliminary draft. The revised draft Convention was sent back to Governments for their observations. It was not until it had received a draft Convention revised for the second time in the light of the further observations made by Governments that the Council, after requesting a Committee of Experts to examine the Governments' observations and once again to revise the draft Convention, taking those observations into account, decided to convene the Diplomatic Conference which opens to-day.

The ground has therefore been well prepared and we have before us a draft Convention which has been most carefully framed. This fact has enabled me to overcome the hesitation I felt when I received the flattering invitation from the Council to preside over the work of the Conference. I have also another reason for believing that it will be possible for me to cope with the difficulties inherent in the President's office—namely, that I shall be working with men all of whom are experts on the subject with which we are about to deal and most of whom have taken part in previous conferences, thereby adding to their experience and their knowledge. They have also, in the past, learnt the value, particularly in the case of international conferences, of the proverb "Striving to better, oft we mar what's well", and they know that it is hardly ever possible at such conferences for them to realise their hopes in full.

I know beforehand that I can rely on your devotion and conciliatory spirit. It is on account of those two qualities that the Conference will—I feel convinced—achieve results that will put a check on illicit practices in regard to narcotic drugs and benefit humanity as a whole.

I declare open the Conference to consider the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

### 2. Appointment of the Credentials Committee.

The PRESIDENT proposed that this Committee should consist of the following members :

M. Emerich PFLÜGL (Austria);  
M. William BORBERG (Denmark);  
M. Alejandro GASTELÚ CONCHA (Senator);  
Mr. Francis Thomas CRIMINS (Irish Free State);  
Phya RAJAWANGSAN (Siam).

*The President's proposal was adopted.*

### 3. Examination and Adoption of the Draft Rules of Procedure of the Conference.

*The Conference adopted its Rules of Procedure (Annex 5).*

### 4. Election of the Vice-President of the Conference.

The PRESIDENT proposed the appointment of M. de Reffye (France), who had presided over the Committee of Experts and had taken a prominent part in combating the illicit use of narcotic drugs.

M. DE REFFYE was elected Vice-President by acclamation.

M. DE REFFYE (France) accepted the office of Vice-President and thanked his colleagues for the confidence they had shown in him.

## 5. Appointment of the Members of the Bureau of the Conference.

The PRESIDENT recalled that, under the Rules of Procedure, the Bureau should consist of the President and Vice-President of the Conference and of nine other members. He proposed the first delegates of the following countries: the United Kingdom of Great Britain and Northern Ireland, China, Japan, Poland, Portugal, the Union of Soviet Socialist Republics, the United States of America, Uruguay and Yugoslavia.

*The President's proposal was adopted*

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## SECOND MEETING

*Held on Monday, June 8th, 1936, at 3.30 p.m.*

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*President: M. LIMBURG.*

## 6. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts.<sup>1</sup>

The PRESIDENT opened the discussion on the revised draft Convention, which, he said, would be considered article by article and paragraph by paragraph:

### PREAMBLE.

M. DA MATTA (Portugal) asked what procedure would be followed with regard to the Preamble; this part of the draft had a certain bearing on the wording of Article 1.

The PRESIDENT did not propose to submit the Preamble for discussion at once, as its drafting would largely depend on the text finally adopted for the Convention. The question of the Preamble should, therefore, be left open for the time being.

M. DA MATTA (Portugal) pointed out that in the Experts' observations on the Preamble, it was said that certain of them did not consider a preamble necessary.<sup>1</sup> He agreed with the President that, if a Preamble were inserted, it could only be properly drafted after the text of the Convention itself had been settled.

On the other hand, it was difficult to discuss Article 1 if the objects of the Convention were not clearly known. His own view was that there should be a Preamble stating the aim sought to be attained by the conclusion of the Convention.

The PRESIDENT noted the Portuguese delegate's agreement to postpone the discussion of the Preamble. When the discussion of Article 1 was terminated, the Conference would be able to decide whether there was to be any Preamble and, if so, what it should contain. In the meantime, as he had already said, the question remained open.

### ARTICLE 1: GENERAL DISCUSSION.

1. In the present Convention, the expression "narcotic drugs" is understood as meaning the drugs and substances covered by the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931.

2. Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other form of deprivation of liberty, the following acts if wilfully committed—namely:

(a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs;

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<sup>1</sup> Document Conf.S.T.D 2, Annex 3.

(b) *Cultivation, gathering and production in contravention of national law, with a view to obtaining narcotic drugs;*

(c) *The inciting or aiding and abetting of the commission of the offences specified above;*

(d) *Any combination or agreement to commit any of the above-mentioned offences;*

(e) *Attempts which have reached the stage of a commencement of execution and, within legal limits, preparatory acts.*

3. (a) *Each of the acts specified in groups (a), (b), (c) and (d) of the second paragraph of this article shall, if committed in different countries, be considered as a distinct offence.*

(b) *Any act done in preparation for or in furtherance of the commission in another country of any of the acts specified in groups (a), (b) and (c) of the second paragraph of this article shall be considered as a distinct offence.*

Mr. FULLER (United States of America) stated that his delegation had submitted an amended text for this article. He would furnish the necessary explanations when delegates had had time to consider the document circulated.

Phya RAJAWANGSAN (Siam) intimated that, when the amendment to Article 1 tabled by the delegation of the United States of America came up for discussion, he would have certain observations to make.

#### *Paragraph 1.*

Colonel SHARMAN (Canada) announced that he had submitted an amendment to this paragraph; the text thereof would be distributed.

The PRESIDENT hoped that, as the amendment had only just been received, the delegate of Canada would have no objection to the Conference proceeding with the discussion of paragraph 2, so that the members might have time to consider the amendment in question.

Colonel SHARMAN (Canada) agreed to the procedure proposed.

#### *Paragraph 2.*

M. DE VASCONCELLOS (Portugal) noticed that in sub-paragraph (a) "extraction" had been included in the list of offences liable to severe penalties. He was familiar with manufacture, conversion, preparation, possession and the other acts referred to in the list, but wished to know where the act of "extraction" was defined.

M. ANTONIADE (Roumania) desired to make a general declaration on the attitude of his Government to the draft Convention as a whole. The Roumanian Government had carefully examined, and was prepared to accept, the revised draft Convention. It had therefore proposed no amendments and, when the various articles had been examined, it would be glad to sign the Convention. He ventured to remind delegates who were proposing amendments of the President's remark that "striving to better, oft we mar what's well" and of the fact that, if too sweeping changes were made in the draft, the gain would not be commensurate with the time lost. He wished to state, therefore, that, while he was instructed to accept and sign the text as now prepared, subject of course to any amendments submitted which might make more clear the detailed provisions, he would be compelled, if the draft were substantially modified, to refer the matter to his Government.

M. DA MATTA (Portugal) noted that, in the new draft of paragraph 2, the form adopted in previous texts had been considerably altered. Sub-paragraphs (a) to (e) had been added which, he thought, was not an improvement. In the introductory text of the paragraph, moreover, the word "necessary" had been inserted without in any way making the text clearer. He therefore proposed its deletion. He further suggested that the words "form of" in the phrase "other form of deprivation of liberty" should also be deleted.

In sub-paragraph (c), in the French text, the word "*assistance*" had been used in the sense of organising or financing the offences referred to in sub-paragraph (a). That term had not a very clear meaning in criminal law and he proposed to replace it by the word "*complicité*".

In conclusion, M. da Matta noted that the word "*faits*" used in the earlier (French) draft had now been replaced by "*actes*", which was less correct. He would like to know why this change had been made.

M. TREBICKI (Poland) recalled that, in a letter of November 13th, 1933, the Polish Government had proposed two drafting amendments which, while not substantially changing paragraph 2, would bring it into closer harmony with the provisions of the Polish criminal code. Article 23 of the latter took a wider view of the offences described in sub-paragraph (e), punishing them even if they had not "reached the stage of a commencement of execution". He would not, however,



insist on those amendments at the moment, as he assumed that the Convention would represent the minimum advance to be made in the matter and would not preclude the application of severer punishments under national legislation.

M. HORTA (Japan) intimated that he would have amendments to sub-paragraphs (c), (d) and (e) when these were discussed.

M. DELGORGE (Netherlands) said that the Netherlands Government had various objections to offer to the text of Article 1, but that the tabling of the United States amendments altered the whole situation in regard to that article. He would, therefore, defer his observations until the United States amendment was under discussion.

Mr. HARDY (India) said that, in the preliminary discussions, the Government of India had expressed doubts as to whether Article 1 would not have the effect of depriving the judicial authorities in India of the right of imposing slight sentences for venial offences. The experts had since taken the view that the words "make the necessary legislative provisions" would not preclude national courts from imposing less heavy sentences. As his Government had again raised the matter, he suggested that it might be advisable if the point were made clear in the Convention itself. He trusted that the Conference would give the matter careful consideration before the final text was established.

The PRESIDENT could fully reassure the delegate of India on the point raised. The idea underlying the draft Convention was that, after its adoption, the maximum penalties imposed under national legislation should be sufficiently severe; countries, however, would still be free to retain the existing minimum penalties. In the Netherlands, for instance, the minimum penalty provided for any offence was one day's imprisonment, and other countries, he believed, also applied special minimum penalties. In his view, therefore, the wording of paragraph 2 would not involve any change in national legislation.

M. DE VASCONCELLOS (Portugal) thought that the remarks previously made by his colleague, M. da Matta, and the observations of the delegate of India showed what care must be exercised in selecting the terms used in the Convention. In the case, for instance, of the phrase "particularly by imprisonment or other form of deprivation of liberty", much depended on local circumstances. In Macao, it frequently happened that drug traffickers caught in *flagrante delicto*, and faced with the alternative of a fine or a term of imprisonment, often preferred imprisonment.

Mr. HARDY (India) expressed the wish that the President's ruling should be recorded in the proceedings of the Conference, as this would facilitate his Government's acceptance of the proposed text of paragraph 2.

M. GORRA (Egypt) pointed out that paragraph 2 of Article 1 raised a delicate question in connection with Egypt. In Egypt there were national courts which judged offences committed by Egyptian nationals, and consular courts which dealt with, and applied their own national legislation to, offences committed by their own nationals. Under Egyptian legislation, drug offences were very severely punished, the penalties being as much as five years' imprisonment, together with very large fines. If the same offences, however, were committed by foreigners, or if foreigners were involved in an offence committed by Egyptian nationals, they were liable to much lighter penalties in their consular courts. Such discrimination in the case of similar crimes committed in one and the same country was obviously most undesirable, and he would therefore have an amendment to submit later to the effect that, in Egypt, consular courts should, in such cases, apply Egyptian law.

Dr. Hoo Chi-Tsai (China) had understood the President to say that the provisions of the Convention would not affect the minimum penalties provided in national legislation. In his view, on the contrary, the Convention should stipulate the minimum penalties to be applied and leave it to national legislation to define the maximum punishment; each country would then be free to enact severer penalties than those laid down in the Convention. If this were not done, China would be in a rather difficult situation. It would be remembered that, under the new Chinese legislation, drug trafficking offences could be punished by death. If, therefore, the Convention provided for no heavier penalty than imprisonment, it would be difficult for China to sign it.

On a point of order, Dr. Hoo Chi-Tsai considered that, as a drastic amendment to Article 1 had been tabled by the United States delegation, it would be advisable, in accordance with the usual procedure, to discuss first that amendment before finally establishing the text of Article 1.

The PRESIDENT explained that there was no intention of discussing in detail the various paragraphs and sub-paragraphs of Article 1 until all the amendments to that article had been circulated. His idea, in continuing the present discussion, was to give delegates an opportunity of expressing their views on the various questions raised by the article.

To clear up the doubts which appeared to prevail regarding the exact meaning of paragraph 2, he would point out that the purpose of the paragraph in question was to oblige the contracting parties to inflict penalties which were not too light. If a contracting party was anxious conscientiously to apply this paragraph of the draft Convention, it must impose at least imprisonment or a similar penalty for the offences enumerated. There was no suggestion, however, that contracting parties had not the right to go further or to impose the supreme penalty if they so desired.

M. SOUBBOTITCH (Yugoslavia) thought that the discussion had served to elucidate the real sense of paragraph 2 of Article 1. The views expressed might, he suggested, be summed up as follows: paragraph 2 imposed on States the obligation to prescribe in their laws for the offences enumerated in the sub-paragraphs at least a penalty of imprisonment or other form of deprivation of liberty. States could, however, if they so wished, go further, but they could not in any case impose for those offences a less severe sentence. This general principle being accepted, national courts would still be free to use their discretion as regards the exact application of the penalties enacted in national legislation. In a given case, the judge would impose a penalty, within the limits of the maximum and minimum special penalties, in accordance with the rules of ordinary law governing the scale of penalties applicable by the judge to that case and in accordance with the rules of ordinary law governing the substitution of one kind of penalty for another.

M. BENAVIDES (Uruguay) said that the criminal legislation of Uruguay would enable that country to give effect to the provisions of the Convention, but that the decision as to the particular kind of penalty which would be applied would depend on the provisions of the Uruguayan Criminal Code. That Code, for instance, contained a stipulation to the effect that any persons who dealt in narcotic drugs on his own account, or on behalf of another person, was liable to a penalty of from six months' to five years' imprisonment. If any change were to be made in the provisions as regards the application of penalties under national legislation, the Uruguayan delegation might have to enter a reservation.

M. DE VASCONCELLOS (Portugal), on a point of order, drew attention to the amendment which had been tabled by the United States delegation and which entirely changed the wording of Article 1. He did not know whether it would be necessary to submit further amendments, but assumed that the present discussion was intended to constitute a general exchange of views on Article 1. A similar procedure should also be adopted for the other articles.

M. GORGÉ (Switzerland) agreed that the Conference was at present endeavouring to elucidate the general significance of Article 1. The delegate of Yugoslavia had interpreted paragraph 2 as meaning that each State was obliged to apply at least the penalty of imprisonment. In his view, that was a too radical interpretation of the text, which read "*particularly* by imprisonment . . .". That implied that imprisonment would not necessarily be imposed in respect of all the offences enumerated. Under the Swiss Federal Law of October 2nd, 1924, for instance, offenders against the narcotic drugs regulations were liable to imprisonment up to one year or a fine of 20,000 francs. It would be for the courts to decide, according to the circumstances, whether the offender should be fined or sentenced to imprisonment, and that option, he considered, should be maintained.

Mr. DOWSON (United Kingdom) wished first to reply to the delegate of Yugoslavia, who had suggested that the effect of Article 1 would be to restrict the liberty of a State to act within the framework of its own criminal law. He would refer the Conference in this connection to Article 12, which read:

"The present Convention does not affect the principle that the offences referred to in Article 1 shall in each country be defined, prosecuted and punished in conformity with the general rules of its domestic law."

He took the opportunity, further, of reminding the Conference of the observations made by the United Kingdom Government in its letter of May 5th, 1936,<sup>1</sup> regarding paragraph 2(b). He would later submit an amendment proposing the deletion of this sub-paragraph.

The PRESIDENT pointed out that, if the intention was to suppress the whole of the sub-paragraph in question, no specific amendment need be tabled. It would be sufficient to vote against sub-paragraph (b) of paragraph 2. If there were a majority of votes against the sub-paragraph, it would be deleted.

M. DELGORGE (Netherlands) supported Mr. Dowson's proposal to delete paragraph 2(b) concerning cultivation and gathering. The Netherlands Government considered that the draft Convention had been framed in order to make previous Conventions more effective. No new subject, therefore, should be inserted in the present text; the Conference should confine itself to those dealt with in the other Conventions. Moreover, a Convention on the production of raw

<sup>1</sup> Document Conf. S.T.D. 3, Annex 4.

materials was being prepared. When the time came for examining it, the opportunity could be taken of considering the possibility of introducing the provision contained in paragraph 2(b).

The Netherlands Government considered, further, that it might even be inadvisable to introduce this fresh question. There was a risk that a Government which objected to such a provision might refrain from acceding to the new Convention. It was also rather absurd to compel Governments, on the one hand, to punish the cultivation and gathering of raw materials and, on the other hand, to leave them free not to prohibit such cultivation and gathering. In some countries, such as the Netherlands Indies, measures already existed for controlling the raw material, whereas in other countries there was full and complete liberty on the point.

M. Delgorgue thought that the question should be dropped for the moment and reverted to when a Convention on the production of raw materials was being concluded.

*Amendment to Article 1 submitted by the United States Delegation.*

Mr. FULLER (United States of America) would confine himself to a few brief, general remarks on the American proposal, reading as follows: <sup>1</sup>

" 1. In the present Convention, the term ' narcotic drugs ' shall apply to all the drugs and substances expressly mentioned in the International Opium Convention signed at The Hague on January 23rd, 1912, or the Geneva Convention of February 19th, 1925, or the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs signed at Geneva on July 13th, 1931, and to all other drugs and substances to which any provision of any of the said Conventions is now, or hereafter may be, applicable.

" 2. Each of the High Contracting Parties agrees to enact effective laws or regulations to limit exclusively to medical and scientific purposes the narcotic drugs and substances to which this Convention relates, and any plant or substance or material from which the said narcotic drugs or substances may in any manner be obtained; and to punish severely any act in violation of such laws or regulations, such punishment to include imprisonment or other form of deprivation of liberty in all cases where that form of punishment is necessary to make effective the purpose of this Convention to suppress the abuse of narcotic drugs.

" 3. Each of the High Contracting Parties agrees that acts in violation of the laws and regulations referred to in the preceding paragraph shall include

(a) Attempts to violate such laws or regulations;

(b) The inciting or aiding or abetting by any means the violation of the said laws or regulations; and

(c) Any conspiracy, combination or agreement to violate the said laws or regulations.

" 4. Any act committed, or any conspiracy, combination or agreement to commit any act in the territory of one High Contracting Party which is a material element in the furtherance of the commission in the territory of another High Contracting Party of any act in violation of the narcotics laws or regulations of the latter country, even though there be a failure to consummate the illegal act in the latter country, shall be regarded as a distinct offence punishable under the laws of the country where the preparatory or contributory act was committed or where the conspiracy, combination or agreement was made. "

Some delegations had considered that this amendment would have the effect of entirely changing the present draft. If it were looked at more closely, it would be seen that this was not the case. As the Netherlands delegate had said, the draft Convention aimed at strengthening the provisions of the earlier Conventions, and the purpose of the American amendment was the same. The expediency of introducing the question of raw opium into the Convention had been questioned. Mr. Fuller would merely remind the Conference of the wording of Article 1 of the Hague Convention, where provision was made for the enactment of effective laws or regulations " for the control of the production and distribution of raw opium ". He asked the President to allow Mr. Ward, the Legal Adviser of the United States Department of State, to address the Conference and make a detailed comment on the American amendment.

Mr. WARD (United States of America) said that, in submitting the amendment, the American delegation had two main objects in view.

In the first place, it desired to propose a more accurate statement of the purpose which, the American delegation believed, had actuated Governments in participation in this and previous conferences—namely, the suppression of the abuse of narcotic drugs. The expression " suppression of the illicit traffic in dangerous drugs ", used in the experts' draft to describe the purpose of the Convention, was not, in the opinion of the American delegation, an adequate declaration of the purpose which the Conference should seek to accomplish.

It was believed that the text of Article 1, proposed by the American delegation, would make this purpose clear. If certain Governments should consider it inadvisable to acquiesce in the

<sup>1</sup> Document Conf S.T.D. 7.

application of the proposed text to certain of their territories, they could, of course, enter an appropriate reservation, but the American delegation felt quite strongly that it should be clearly and unequivocally declared, as the opinion of all the nations represented at the Conference, that the only practical way to abolish narcotic-drug addiction was to limit exclusively to medical and scientific purposes the narcotic drugs and substances covered by the proposed amendment and the sources from which they were, or might be, obtained. The Government of the United States had consistently taken the position that that was the purpose of the Hague Convention of 1912, and it was sincerely hoped that that view was shared by all the Governments of the world.

The Preamble to the Hague Convention declared the purpose of the signatory Governments to be "the gradual suppression of the abuse of opium, morphine and cocaine and also of the drugs prepared or derived from these substances, which give rise, or might give rise, to similar abuses". What was the meaning of the words "gradual suppression"? More than twenty-four years had elapsed since the Hague Convention had been signed and more than twenty-six years since the meeting of the International Commission at Shanghai, the work of which was eventually supplemented by the Hague Convention. The query therefore arose: If the time had not now arrived to make an unconditional declaration of the intention of Governments to suppress the abuse of narcotic drugs, when would such a declaration be made?

The American delegation accordingly hoped that most, if not all, of the Governments represented at the Conference would be willing, as they had in the past, to declare their determination to make a definite advance in the campaign to eradicate the scourge of narcotic-drug addiction by assuming an obligation to limit narcotic drugs and substances to which the proposed amendment related exclusively to medical and scientific purposes.

The second objective of the American delegation was to avoid any specific enumeration of the offences sought to be punished. In addition to the question of possible uncertainty as to the application, to some of the offences, of the previous Conventions, it would appear to be practically impossible to make an accurate and comprehensive list of the offences which deserved punishment, and it seemed definitely preferable to establish the principle that abuse of narcotic drugs or substances covered by the Convention should be severely punished and leave to the legislative bodies of the participating States the task of enacting laws necessary to give effect to that principle.

That procedure would appear to avoid the apparent impropriety of a conference of this kind attempting to prescribe, and to a certain extent to define, offences. It would seem to be sufficient, therefore, for the participating countries to accept an obligation in the sense suggested in the draft which the American delegation now presented, and refer to their respective legislative bodies the task of making the obligation effective.

The second part of paragraph 2 of the amendment proposed by the American delegation provided for imprisonment or other form of deprivation of liberty, wherever such punishment might be necessary to give effect to the purpose of the Convention to suppress the abuse of narcotic drugs. The text of the experts' draft appeared to be susceptible to the possible interpretation that a prison sentence was required to be imposed for every offence. The American delegation did not consider that such a strict interpretation was imperative, but, in view of the possible doubt on that point, it was considered advisable to suggest a formula which would not be open to that objection.

The other provisions of the proposed American amendment did not call for much comment. Generally speaking, they followed, with some modifications, the text of the experts' draft. In paragraph 4, the American delegation had tried to express as clearly as possible the desire of Governments not to tolerate in their territory any violations or attempted violations of the laws of other countries. The wording proposed was regarded as covering cases of that kind.

M. DE VASCONCELLOS (Portugal) wished to raise a point of order. With all deference to the United States of America and the United States delegation, he felt obliged to say that that delegation's amendment was not receivable. The present Conference had been convened to "strengthen the measures intended to prevent infringement of the provisions" of the International Opium Convention signed at The Hague, the Geneva Convention of 1925 and the Limitation Convention of 1931. The purpose of the Conference was also "to prevent and punish by the methods most effective, in the present circumstances, the illicit traffic in the drugs and substances covered by the above Conventions". The United States amendment would have the effect of doing away entirely with the provisions of the 1925 Convention regarding the use of smoking-opium, so that, if it were adopted, the Conference would be going beyond the scope of the Conventions which it was to try and strengthen and beyond even its own terms of reference. The proposal of the United States delegation could be submitted to another Conference, if it were desired to hold one, but not to the present Conference.

The PRESIDENT observed that the Portuguese delegate had raised the question whether the United States amendment was or was not receivable. He asked speakers for the time being to confine their remarks to the question whether the amendment was acceptable.

M. LOPEZ-REY (Spain) agreed with the Portuguese delegate that the American proposal absolutely changed the meaning and the purpose of the present Conference. Instead of drawing up a draft penal Convention, it would have to frame purely administrative regulations. Countries like Spain would have to change the laws and administrative regulations in force, for they would have to punish with imprisonment or other forms of deprivation of liberty ordinary administrative

offences, which was inadmissible. The question to be decided was whether it was proposed to draw up a Convention on penal law or a Convention on penal administrative law. The Spanish delegation held, therefore, that it could not support the proposal of the United States delegation unless the Conference itself did so.

M. LATOUR (Brazil) said that, as his country had effective legislation for suppressing the traffic in, and abuse of, narcotic drugs, it was particularly interested in any measure aimed at regulating the production and conversion of the raw materials used for manufacturing narcotic drugs. The Brazilian delegation therefore considered the American amendment to be very useful, more particularly the provisions of paragraph 2 regarding cultivation. While it understood the scruples felt by the Portuguese delegation, the Brazilian delegation believed that the American amendment strengthened and promoted more effectively the repressive policy underlying the preliminary draft Convention. The Brazilian delegation supported the amendment tabled by the United States delegation.

Dr. HOO CHI-TSAI (China) also supported the American proposal. He did not propose to enlarge on the question of substance, but would confine himself to the point of order raised. The Chinese Government's attitude to the narcotic-drug problem was well known. It had been clearly set forth by the Chinese delegation at previous conferences as well as in the Advisory Committee. The Chinese delegation did not think that the American amendment was so inconsistent with the terms of reference of the Conference as some members imagined. As the United States delegate had said, paragraph 2 represented an attempt to define the words "illicit traffic". Moreover, the amendment would, perhaps, not be retained word for word in its present form. A compromise might be attempted with a view to obtaining a text which could be accepted by all the delegations present. If that were possible, it would be a very valuable result.

Dr. SCHULTZ (Austria) thought that all the delegations would be unanimous in their deep appreciation of the ideas underlying the American delegation's proposal, ideas which represented the common ideal. Nevertheless, there was a difference between an ideal and actual facts. The first necessity was to see whether the American amendment came within the scope of the present Conference. It seemed clear that the reply to that question was in the negative.

Moreover, everyone was anxious to see the Convention under discussion concluded. It was to be feared, however, that, if the American amendment were taken into consideration, it would endanger the Convention. From certain statements which had been made, it could be foreseen that the amendment could hardly be accepted by many Governments. The Austrian Government was by no means opposed to the ideas underlying that amendment, but thought that it should be borne in mind that several States took a different view. In those circumstances, M. Schultz thought it would be better not to accept the American proposal.

Mr. DOWSON (United Kingdom) considered that the American proposal to ask States to undertake to make legislative provision for abolishing the abuse of the raw materials used for the manufacture of drugs could not be entertained. That proposal would widen the purpose of the present draft Convention and take it outside the scope of the previous Conventions, to which the proposed Convention was merely a sequel.

The basis on which the preliminary draft had been framed was explained in the Advisory Committee's report to the Council of May 24th, 1933.<sup>1</sup> In that report, the Advisory Committee emphasised more particularly the inadequacy of the penalties at present enacted in certain countries and the gaps in existing legislation which made it impossible to reach persons who were not directly connected with the illicit traffic. It would be seen that the limited nature of the purpose of the draft Convention under consideration was perfectly clear.

Mr. Dowson further referred to his Government's observations on the proposal to insert in the Convention provisions dealing with the cultivation and gathering of raw materials used for the manufacture of drugs. In those observations it was stated :<sup>2</sup>

"The draft Convention . . . was intended to deal more effectively with the illicit traffic in dangerous drugs—that is, trading in opium and manufactured drugs, not for medical or scientific purposes, but for the gratification of addiction."

The United Kingdom Government had also pointed out that illicit traffic was already dealt with by the Conventions in force, but experience had shown that there was a lack of uniformity between one country and another as regarded the measures applied to traffickers and that the penalties were, frequently, quite inadequate. In the opinion of the United Kingdom Government, the purpose of the draft Convention was to ensure greater uniformity and greater strictness in the punishment of traffickers. For those reasons, the United Kingdom delegation considered that the American amendment could not be accepted.

<sup>1</sup> Document C.335.1933.XI. (Appendix 3 to the report of the Advisory Committee to the Council on the Work of its sixteenth session, document C.385.M.193.1933.XI.)

<sup>2</sup> Document Conf. S.T.D. 3, Annex 4.

M. KOUKAL (Czechoslovakia) proposed to consider in what way the American amendment differed from the experts' draft Convention; the differences related to three main points :

1. The American amendment tended to widen the connotation of the term " narcotic drugs ," so as to include, not only the drugs and substances explicitly covered by the Conventions referred to in the preliminary draft, but also " all other drugs and substances to which any provision of any of the said Conventions is now, or hereafter may be, applicable ". The Czechoslovak delegate felt that, on that point, the American amendment was valuable and did not go beyond the Conference's terms of reference. It would have the effect of making it unnecessary later to introduce amendments in the Convention which was to be concluded or to convene further conferences in order to amplify that Convention.

2. The contracting parties were asked to enact effective laws or regulations limiting narcotic drugs and the raw materials from which they were obtained exclusively to medical and scientific purposes. The Czechoslovak delegation thought that, in this connection, the American proposal was too rigid, as, literally interpreted, it would mean that any manufacturer using drugs not for medical or scientific purposes but for the manufacture of an industrial product would be liable to imprisonment.

3. The contracting parties were asked to punish severely any act in violation of such laws or regulations without drawing a distinction between the cases covered. For instance, the mere fact of inadvertently forgetting to lock up narcotic drugs might be punished by imprisonment. On that point, also, the American proposal went too far.

Summing up, the Czechoslovak delegate supported the first of the three provisions but not the second and third.

M. DELGORGE (Netherlands) said that he had been keenly interested in the American amendment, which contained many points deserving of closer examination. As a private individual, he would be very glad to discuss the amendment, but for the moment he must confine himself to the question whether or not the new text could be accepted. He himself had been sent to the Conference by his Government to examine measures for the suppression of the illicit traffic in dangerous drugs in connection with other Conventions under which his Government had assumed certain obligations with which it was doing its best to comply. He could not, however, discuss questions on which he had received no instructions and, such being the case, he must take the view that the American amendment could not be accepted.

The PRESIDENT, in view of the lateness of the hour, asked the other speakers who had sent in their names to reserve their observations for the following morning.

Before closing the meeting, he thought it advisable to give his provisional view on the question under discussion. In his opinion, the American amendment certainly went beyond the scope of the Conference's work. What was the purpose of the Conference? It was to ascertain and frame penalties which would contribute to the effective application of the earlier Conventions but not to extend the scope of those Conventions. Such an extension might perhaps be useful in itself, but the present Conference was not called upon to study that question; it had merely to provide the penalties lacking in the earlier Conventions. He could even add that the very fact that he had been appointed by the Council to preside over the Conference bore out that view. When he had raised the objection that he had no expert knowledge of narcotic drugs, he was told that he was appointed as a jurist, because three-fourths of the questions which the Conference would have to examine would be legal questions.

The members of the Conference would recall that there had been an initial draft framed by the Advisory Committee with great care and sent to Governments for their views. The Governments had communicated their observations and had made no request for an extension of the earlier Conventions. The Advisory Committee had examined the observations thus received, had recast the initial draft and submitted it again to Governments. The further observations of Governments on this second text had never gone beyond the limits originally defined. Lastly, in order to complete the preparatory work, a Committee of Experts had, once again, modified the draft Convention, so that it could now be considered as having been framed with all the necessary care and caution. If the work was to be properly pursued, the Conference should confine itself to the draft Convention as it had been framed.

Moreover, the United States Government had, in its replies, taken the same view. In quoting those replies, the President had no intention of making the United States delegation contradict itself; he only wished to show that the scope of the Convention now under discussion had always been the same as that adhered to by the United States. In its reply of April 13th, 1934, the State Department had said :<sup>1</sup>

" In the opinion of the United States Government the provisions of existing treaties for the suppression of illicit activities connected with the traffic in narcotic drugs, if given proper effect by all the interested Governments, are adequate to accomplish the purpose of the treaties, and this Government would not, therefore, feel disposed to participate in the proposed Convention."

<sup>1</sup> Document Conf. S.T.D. 1, Annex 2.



On May 13th, 1935, the United States of America communicated the following observation :<sup>1</sup>

" This communication pointed out in reiteration of the views expressed in previous communications that it would not be practicable to give effect in the United States to the provisions of the draft Convention which would require prosecution in one country for offences committed in another country. It also repeated the opinion of the Government that the provisions of existing treaties were adequate to accomplish the purpose of those treaties and, for the reasons stated, the Government of the United States could not participate in the proposed Convention."

It would be seen from those replies that, when Governments were being consulted, the limits as defined by the Advisory Committee were also those accepted in the replies of the United States.

In conclusion, the President said that, speaking as a jurist, he could not see how such an indefinite juridical idea could be introduced in an article which, though it might doubtless be open to criticisms and observations, had been worded in a very exact and legal manner. Before closing the proceedings, he would venture to suggest that the United States delegation should withdraw its amendment in its present form. When the Conference came to consider in detail the various paragraphs of Article I, there would still be an opportunity for making such changes, additions or deletions as would be advisable.

*The continuation of the discussion was adjourned to the next meeting.*

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### THIRD MEETING

*Held on Tuesday, June 9th, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

#### 7. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>2</sup> (continuation).

##### ARTICLE I (continuation).

##### *Amendment submitted by the United States Delegation (continuation).<sup>3</sup>*

The PRESIDENT wished to make a general observation with a view to clarifying the position in regard to the amendment proposed by the United States delegation. At the previous meeting, it had been asked whether the amendment was receivable. There had been some misunderstanding, because the question of the receivability of an amendment could not arise. According to the parliamentary practice of all countries, any amendment was receivable, and that was also the opinion of jurists. The point at issue was whether the Conference was competent to discuss the substance of that amendment. According to the statements made at the previous meeting, several members of the Conference considered, as the President did, that the Conference was not competent to deal with all the points of the amendment submitted by the United States delegation. The discussion would, therefore, be continued for the purpose of ascertaining whether the Conference should, or should not, discuss the substance of the amendment.

Mr. HARDY (India) pointed out that the amendment proposed by the United States delegation was intended, not only to suppress the traffic in narcotic drugs, but also to modify considerably one of the principles underlying the Conventions which had been signed by many of the countries represented at the Conference—namely, the principle of the division of narcotic drugs into two categories. The first consisted of drugs used solely for medical and scientific purposes, and the second of drugs the use of which it was not proposed to restrict in that way. Those two categories had been drawn up after lengthy discussion. Even if the delegates were in possession of instructions from their Governments on the matter, it would take a long time to amalgamate the two categories. But, in point of fact, the delegates had no instructions from their Governments. They would have to ask for them, and in the case of some countries the instructions could not be given for a very long time. That applied to India, where the Central Government would be obliged to consult eleven provincial governments, since the questions raised by the United States amendment came exclusively within the competence of the provincial governments. That would take at least a year. In those circumstances it would be impossible for the present Conference to complete its task, and that would mean the breakdown of the Conference. In his opinion, that purely practical consideration constituted a weighty reason for not embarking upon discussions of that kind.

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<sup>1</sup> Document Conf. S.T.D. 1, Annex 2.

<sup>2</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>3</sup> For the text of the amendment, see page 8.

Mr. FULLER (United States of America) made the following statement :

I wish to express appreciation of the kindness and courtesy of our President in quoting, at the close of last evening's meeting, certain statements made by the American Government in regard to the first two drafts of the proposed Convention which we have at various times had sent us for consideration, drafts which were totally different from the one before us at present and which, having been found unsatisfactory, had been referred to a Committee of Experts. I only regret that he did not quote our complete replies and that he did not quote what we had to say in regard to the present draft, the one drawn up by the Committee of Experts. On the question of this proposed Convention for the Suppression of the Illicit Traffic, and I refer to the draft now before us, I should like to supplement what the Chairman had to say last evening by quoting from the statement on that draft which was made by my Government as follows :<sup>1</sup>

"The Government of the United States of America considers it important that the Conference consider prevention and punishment of illicit cultivation, gathering and production of poppy, coca and cannabis."

For over two years past, my Government has been saying that, in its opinion, the provisions of the existing treaties for the suppression of illicit activities connected with the traffic in narcotic drugs, if given proper effect by all the interested Governments, are adequate to accomplish the purpose of the treaties, and that the American Government would not, therefore, feel disposed to participate in this proposed Convention. Eventually, however, we received an invitation to participate in the present Conference.

Before replying to that invitation, my Government stated to the Secretary-General, from whom the invitation had emanated, that the terms of reference of the proposed Conference and the scope of the proposed Convention appeared to be so indefinite that my Government found difficulty in ascertaining what limits, if any, would be imposed upon the work of the Conference.

Accordingly, we asked him the following questions :

"(1) Whether the Preamble of the first and second draft substantially describes the scope of the work;

"(2) Whether subjects which have not already been presented to Governments for observations but which are nevertheless connected with the prevention of, and punishment for, illicit operations may be considered by the Conference;

"(3) Whether the work of the Conference is to be limited to the subjects included in the draft submitted by the Committee of Experts and printed as an annex to document S.T.D.2 or whether additional subjects connected with the prevention of and punishment for illicit traffic may be introduced;

"(4) Whether the competence of the Conference will extend to questions involving (a) cannabis, (b) illicit trade in raw materials, (c) illicit manufacture of derivatives."

In reply to these enquiries, we were informed by the Secretary-General that :

"The draft Convention to be submitted to the Conference will constitute only a basis of discussion, and that, as stated by the Rapporteur to the Council,<sup>2</sup> its acceptance as a basis of discussion does not commit any Government."

We were further informed that :

"According to the procedure followed at all conferences held under the auspices of the League of Nations, the Conference alone has sovereign powers; it may take whatever decisions it thinks fit, and is therefore fully entitled to modify any draft submitted to it as a basis of discussion."

We were further informed by him that :

"Any delegation at the Conference may propose any matter for inclusion in the Convention, and the Conference itself will have complete liberty to accept or disregard such proposals."

With regard to the question whether the Preamble to the first and second drafts substantially describes the scope of the work of the Conference, we were informed by him that :

"The existing draft Preamble cannot in any way be regarded as a final description of the objects of the Convention to be concluded, and still less serve as a limitation to the scope of the work of the Conference itself."

This was the basis on which my Government accepted the invitation to participate in these discussions. We were willing, in a spirit of co-operation, to participate in this Conference, in the hope that something effective might come out of it. In reliance upon these official assurances,

<sup>1</sup> Document Conf. S.T.D. 3, Annex 4.

<sup>2</sup> See *Official Journal*, June 1935, page 612.



my Government undertook to send delegates, and it was on the basis of these assurances that the American delegation introduced the amendment which is now the subject of discussion.

If I interpret correctly the suggestions of a number of my colleagues in this Conference, they propose that there should be excluded from its scope the production, contrary to law, of raw materials, including opium, the coca leaf and cannabis. The net result of this would, apparently, be to limit the scope of this Conference to a discussion of measures for the prevention of, and the punishment for, only the purchase and sale and manufacture, contrary to law, of morphine and its derivatives and of cocaine and its derivatives. I should greatly regret to see this Conference limit its scope in any such manner, but I realise that, as stated in the replies which my Government received from the authority which invited us to this Conference, the Conference itself is sovereign and quite free to limit its discussions and its action in any way that it sees fit.

Furthermore, I greatly regret to note from the statements made by several of our colleagues in the Conference (particularly our colleague from the Netherlands, who states that he cannot undertake to discuss the question of illicit production, which was included in the draft prepared by the Committee of Experts) that their instructions do not permit them to discuss even all of the stipulations to be found in the draft Convention.

I wish to point out, however, that the amendment to Article 1, which the American delegation has introduced, proposes no extension of the existing Conventions. As a matter of fact, our opinion is, as the President has pointed out to you, that, if the existing Conventions were to be given proper effect by all of the interested Governments, there would be no occasion whatever for drawing up the present Convention. In fact, it would appear that the proposed Convention is really premature, and should be deferred until the measures prescribed in existing Conventions have been fully put into effect. In this connection, I may point out to you that the Hague Convention, entered into twenty-four years ago, requires the parties thereto to enact effective laws or regulations for the control of the production and distribution of raw opium. The same Convention requires the contracting Powers to take measures for the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium. There is no necessity at the present moment to go into the further details of the Hague Convention.

The American delegation has presented to you its suggestions as to the way in which to accomplish the object for which it was informed that this Conference was convened. It has been our understanding for many years that the older drug treaties call upon the parties thereto to suppress the abuse of narcotic drugs, including raw opium, prepared opium, the derivatives of opium, the coca leaf, and the derivatives of the coca leaf, as well as cannabis. The suggestions which we have offered to the Conference have been based on that interpretation of existing treaties.

I think that the President and the Conference will realise that, in view of the circumstances which I have just outlined to you, the American delegation is quite justified in requesting that it be accorded the courtesy of a record vote on the question whether or not the amendment it has proposed can be considered by the Conference in the form in which it was proposed.

M. DE REFFYE (France) wondered what would be the consequences of the adoption of the United States proposal. The delegates had been sent to the Conference to discuss a draft Convention drawn up after lengthy study and after the preparation of several successive drafts, each one an improvement upon its predecessor. The draft Convention submitted to the Conference was, of course, not perfect, but it had the effect of tightening up the system of supervision and punishment, so as to make it possible to reduce the proportions of the evil which it was desired to combat. The acceptance of the United States amendment would delay that work, since the matter would have to be referred to the Governments, which would be obliged to consult the authorities and administrations concerned, and that would take some time.

It would be better to propose to the United States delegation that it should join in the discussion of the present draft Convention, which marked an important step forward. It was not, of course, the final step, but it represented all that could be done at the moment. Further progress could be made later.

If the United States delegation would be good enough to discuss the present draft Convention, there were many points in its proposal which could be taken up and discussed with a view to their incorporation in the final text of the Convention. The United States proposal to suppress the use of narcotic drugs for anything but medical or scientific purposes should be left for another Conference.

The Conference could quickly achieve important results with the means at present at its disposal. If, therefore, the United States delegation would agree to take part in the discussion of the present draft, another Conference could be held later for the purpose of taking further action to combat the abuse of narcotic drugs.

M. DE VASCONCELLOS (Portugal) wished to give the Conference some explanations, in view of the observations which had been submitted. He emphasised the necessity of imposing severer sentences on traffickers. The profits accruing from the clandestine trade in narcotic drugs were such that it was necessary to introduce severe penalties, more particularly imprisonment, in order to punish those taking part in the illicit traffic. Fines were not effective, since they were allowed for in the prices of the drugs. Sentences of imprisonment, on the other hand, were usually too lenient. In such circumstances, it was impossible to suppress the illicit traffic. It was clear that if all the States parties to the international Conventions for the suppression of the illicit traffic in

dangerous drugs imposed severe penalties on traffickers, the present draft Convention would be unnecessary. It was a recognised fact, however, that, in many countries, the penalties laid down for the commission of acts which were universally condemned were too light. So long as profits amounting to millions could be gained with minimum risks, the traffickers were doing good business.

As regards the American proposal, the Portuguese delegate highly appreciated the initiative taken by the United States delegation. It represented the ideal aimed at by all—to restrict the use of narcotic drugs to medical and scientific purposes. But could such a radical measure be applied immediately? Were there not certain facts which had to be borne in mind? In the Far East, for instance, there was a state of affairs which could not be immediately altered. The use of narcotic drugs was very widespread in that part of the world. To a large section of the population which was under-nourished, opium provided sensations of temporary well-being and satisfaction, and its use could not be abolished forthwith. It was an age-old custom, and to abolish it abruptly would constitute a social and physiological danger. Any measure of abolition should therefore be gradual. It was that need for taking action progressively which had led to the adoption of the Convention signed at The Hague in 1912 and of the 1925 Convention which placed the use of smoking-opium under the supervision of the Governments which undertook to limit it by setting up State monopolies, by which means the manufacture of and the trade in, prepared opium would be limited progressively. Moreover, it could not be admitted that a draft Convention on penal law should annul existing Conventions. At the same time, in view of the letters received from the Secretary-General by the United States Government, M. de Vasconcellos could understand that the delegate of the latter country should propose the amendment in question. Accordingly, he withdrew, out of courtesy to the American delegation, the request he had made on the previous day that the amendment should be considered non-receivable.

M. de Vasconcellos, nevertheless, could not agree with the Secretariat as to the powers of the Conference. The Conference was not sovereign. It was acting on behalf of the Council and could deal only with questions which were compatible with the existing Conventions.

Reverting to the substance of the United States delegation's proposal, the Portuguese delegate observed that the amendment submitted was designed to suppress, not only the illicit traffic, but the licit traffic in prepared opium, which, he thought, was, for the time being, quite impossible. He would also urge upon the United States delegation that the present draft Convention did not overlook the suppression of the illicit traffic in raw and prepared opium, but that, in accordance with the 1925 Convention, it reserved the right of Governments to control the licit traffic and to keep that traffic within the limits laid down by the Convention. He would, therefore, suggest referring all the amendments submitted to a drafting committee, which would be instructed to prepare a new text of Article 1 in the light of all the observations made at the Conference.

On the subject of Article 1, M. de Vasconcellos was in favour of deleting paragraph 2(b) referring to "cultivation, gathering and production in contravention of national law, with a view to obtaining narcotic drugs". In the near future, there would be a conference on the limitation and control of the cultivation, gathering and production of the opium poppy and the coca leaf, at which the question referred to in paragraph 2(b) would have to be discussed. The present Conference, as a penal law conference, could not deal with questions which were not subject either to limitation or control.

Summing up, the delegate of Portugal formally asked the President to give proper form to his proposal to refer all the amendments tabled to a drafting committee.

Dr. CHODZKO (Poland) thanked the Portuguese delegate for having, in a spirit of compromise, modified his point of view, and fully endorsed the proposal to refer the amendment submitted by the United States delegation to a drafting committee.

On the other hand, he was not in favour of deleting paragraph 2(b), but, as the Conference would revert to that question, he would submit his remarks on the subject at the appropriate moment.

M. SEYMEN (Turkey), referring to paragraph 2(b) of the draft Convention, as reproduced also in the American delegation's amendment, said that he fully agreed with the remarks made by the United Kingdom and Portuguese delegates, and asked for its deletion. The Conference was certainly aware that preparations were being made for a conference for the international regulation of the cultivation of the opium poppy. Without waiting for the results of the discussions which were being held on the subject in the Advisory Committee, the Turkish Government had, under a law of 1933, made the cultivation of the opium poppy subject to regulations limiting the area planted with that crop. In the present state of affairs, however, when the question of limiting opium cultivation was only in its first stage—that was to say, the stage of preliminary study—the Turkish Government did not think it necessary to anticipate the decisions of the Advisory Committee, to which the matter had been regularly referred. The Turkish Government, therefore, could not immediately accept an international contractual obligation on a question in regard to which the material necessary for forming a judgment was beyond its control.

M. GORGÉ (Switzerland) said he felt attracted by the proposal of the United States delegation, as representing a very high ideal to which all the members of the Conference aspired. Switzerland was so devoted to that ideal that her delegate would be ready to support the proposal, were it not that, at an international conference, the situation of other countries must be taken into account.

Very serious objections to the United States amendment had been raised by the delegates of the United Kingdom and of Portugal, who had put forward very impressive arguments. It had to be recognised that the proposal in question was outside the scope of the Conference, and that delegates who had no instructions from their Governments on the questions dealt with in the proposal could not express an opinion. It was, therefore, desirable that the United States delegation should agree to withdraw its proposal.

With regard to the suggestion that the United States amendment be referred to a drafting committee, it should be pointed out that such a committee could not take any action as regards the principle of the amendment, and that, in the present circumstances, that principle would have to be abandoned.

The delegate of Switzerland suggested as a practical measure that the proposal of the United States delegation might be retained with a view to embodying it in the Final Act of the Conference. It might there take the form of a recommendation; by this means, a tribute would be paid to the initiative taken by the United States. The recommendation would be in no way binding on the signatory States, but it would be useful with a view to future discussion.

M. LACHKEVITCH (Union of Soviet Socialist Republics) said that, in view of the legislation in force in his country, he would be able to associate himself with the United States proposal. As a jurist, however, he had to recognise that the Conference had only limited terms of reference, and that a fundamental change in the international legislation limiting the trade in narcotics would not come within its scope. That was no reason, however, for rejecting the whole of the proposed amendment. As the Union of Soviet Socialist Republics aimed at the most rigorous and extensive suppression of the illicit traffic in narcotics, its delegate supported the proposal that the United States amendment be referred to a small committee, which would extract therefrom such parts as came within the scope of the draft Convention, bearing in mind, at the same time, the possibility of giving paragraph 2 of the American proposal the form of a recommendation or of an optional article attached to the Convention. Such a recommendation or provision might be applied in those countries where the legislation was sufficiently advanced. A recommendation of that kind, or, better, an optional article, which would, if necessary, be binding only upon some of the States signing the Convention, might, he thought, be accepted by the Conference.

Dr. HOO CHI-Tsai (China) recognised the force of some of the arguments which had been raised against the proposal of the United States delegation. For instance, the fact that the delegates had no instructions from their Governments for discussing that proposal, and that, if they were to ask for instructions, it would be a long time before they could receive them, was a practical objection which, while it did not affect the principle of the proposal, nevertheless constituted a very real obstacle for some countries. Consequently, although he had supported the United States proposal at the preceding meeting, the delegate of China was ready to yield to those arguments rather than run the risk of failure to conclude a Convention. He was, however, unable to accept some of the arguments that had been adduced for rejecting the United States proposal. He referred to the arguments that the use of opium could not be abolished, because it was an age-long practice, and that the maintenance of Government opium monopolies was justified on physiological grounds.

Dr. HOO CHI-Tsai supported the proposal of the delegate of the Union of Soviet Socialist Republics that the substance of the United States proposal be embodied in an optional clause in the Convention, which might be signed by all States that desired fully to apply Article 6 of the Hague Convention aiming at the gradual abolition of the use of prepared opium. Although that optional clause might not at first have much practical value, it would later exert considerable moral influence making for the suppression of the drug traffic, since the countries desiring to suppress the use of opium for purposes other than medical and scientific requirements would all have signed it; by that means, some moral pressure would be brought to bear upon the other countries which hesitated to sign it.

M. BENAVIDES (Uruguay) entirely associated himself with the proposal of the United States delegation. He observed, moreover, that the Pan-American Conference, at its session at Montevideo in December 1933, had adopted, in the matter of the suppression of the traffic in narcotics, a resolution which was very similar to the proposal submitted by the United States delegation. That resolution had contained the following recommendations:

"1. To recommend that the countries of America establish, when their domestic legislation allows, the monopoly by the State of the sale of injurious and habit-forming drugs as the best method of avoiding illicit traffic.

"2. That, when possible, they confine the importation of these drugs to one port, in order to facilitate and render more efficient the Customs control.

"3. That, in accordance with domestic laws, they exercise a strict control.

"4. That the legislation of each country shall not consider drug addicts in the same class as common delinquents, but as pathologic cases requiring the special care of the State."

If the Conference were not able to insert the proposal of the United States delegation in the Convention itself, M. Benavides would ask that the substances of that proposal be embodied in an optional clause.

Mr. Dowson (United Kingdom), in view of the statement made by the United States delegation and more particularly in view of the communication the United States Government had received from the Secretary-General, would be prepared, as a matter of courtesy, to agree that the proposal of the United States delegation should be discussed, although, as he had stated on the preceding day, he considered that it fell outside the scope of the Conference. He did not wish to express any opinion on the merits of the various suggestions made by the United States. He only desired to indicate that, in his view, the fact that the United States proposal in paragraph 2 of their amendment lay outside the scope of the Conference was not necessarily a reason for not discussing it.

The PRESIDENT was glad to see the spirit of conciliation that had revealed itself during the discussion.

The United States delegation would note that several speakers had appealed to it to show a spirit of conciliation too. It would also note that several delegates were not authorised to discuss its amendment or to express any opinion upon it. Further, it had heard several delegates state that, although they had not that authority, they felt great sympathy for the ideal expressed in the amendment. He would, therefore, venture to ask the United States delegation if it would be ready to accept the procedure proposed by the delegates of Switzerland and of China—namely, that the substance of its proposal be embodied in a recommendation in the Final Act of the Conference.

As regards the suggestion that the proposal be embodied in an optional clause, the President pointed out to the delegate of the Union of Socialist Soviet Republics that delegates who were not authorised to sign an obligatory article of that kind had no authority either to sign an optional clause; the addition of such a clause would not, therefore, serve any useful purpose.

The President would respectfully suggest to the United States delegation that it should withdraw its amendment as at present referring to an obligatory article, and should agree that its proposal should, instead, take the form of a recommendation for insertion in the Final Protocol. He would point out to the United States delegation that there was no question of its having to sacrifice altogether the amendment it had submitted. The only sacrifice asked of it related to that part of the amendment which lay outside the terms of reference of the Conference, and in respect of which the delegations had no instructions—namely, the part referring to the scope of the draft Convention. That part of the proposal which was an amendment to Article 1 of the draft Convention would be discussed as such.

In connection with the observations made by the delegate of Switzerland regarding the powers of the drafting committee, the President said he himself also held that that committee would not be entitled to discuss the question of principle relating to the scope of the Convention.

Dr. Hoo Chi-Tsai (China) agreed with the view expressed by the President with regard to the powers of the drafting committee. That committee could not draw up texts relating to a proposal, unless the principle of that proposal had first been adopted at a plenary meeting.

As regards the form in which the substance of the United States proposal should be inserted, the delegate of China wished to make it clear that, although he had supported the suggestion for a recommendation, he was still more in favour of an optional clause, to which those delegations which were unable at present to sign it might adhere later. With regard to the objection that it would be impossible for some delegations to sign the optional clause, he would point out that such a clause would not necessarily be signed immediately, and, further, that its acceptance might be made dependent on certain conditions—for instance, accession to it by certain countries mentioned by name, or deferment of its application until after an agreed interval. In this respect, the article might be compared with the optional clause relating to the compulsory jurisdiction of the Permanent Court.

M. DE VASCONCELLOS (Portugal) noted from the observations which had been made that his proposal for setting up a drafting committee had been misunderstood. In proposing that the amendment of the United States delegation and those of the other delegations should be referred to a drafting committee, the delegate of Portugal had had in mind a committee which would play a conciliatory rôle and would, therefore, be given a wider mandate than a mere drafting committee. He had meant it to be understood that that body should get into touch with the authors of the amendments and should aim at reconciling the different points of view.

As regards the suggestions that either a recommendation or an optional clause should be attached to the final text of the Convention, he was attracted by each of those suggestions. He was, however, more in favour of the first, since a recommendation might be signed by all, an advantage which an optional clause would not present. He did not wish, however, to prejudge the decision which the Conference would have to take.

*The continuation of the discussion was adjourned to the next meeting.*

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#### FOURTH MEETING

*Held on Tuesday, June 9th, 1936, at 3.30 p.m.*

*President : M. LIMBURG.*

#### 8. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

##### ARTICLE I (continuation).

##### *Amendment proposed by the United States Delegation<sup>2</sup> (continuation).*

Mr. FULLER (United States of America) said that, before undertaking to reply to the question addressed to him at the preceding meeting by the President, he would like to be more precisely informed as to the question which was before the Conference at the present moment. As he had had the privilege of telling the Conference at the preceding meeting, his Government, under what it had understood to be the terms of the invitation extended to it, had sent delegates to assist the Conference by placing before it their ideas on certain amendments, which it considered to be desirable and expedient in respect of the text that had been drafted by the Committee of Experts. The United States delegation had made a careful and thorough study of all the available material, and had laid before the Conference its suggestions in respect of Article I. All that was asked with regard to that amendment was that it should receive the consideration of the Conference. The United States delegation had been met with the proposal that the Conference should refuse even to consider the amendment.

He understood that the question at present before the Conference was whether or not to give any consideration to the United States amendment. His delegation had not insisted on the textual adoption of that amendment. All that it had originally asked was that some consideration should be given to it. He had asked at the preceding meeting that the Conference should accord the United States delegation at least the courtesy of a record vote on the question whether or not the amendment it had proposed could be considered by the Conference in the form in which it was proposed. His delegation could not undertake to withdraw its amendment. It, too, had instructions, which were to place before the Conference the views of the United States Government. It was for the Conference to decide whether it would give consideration to those views or not.

Until the Conference had taken that decision, it would be fruitless for the United States delegation to undertake further discussion of the text or of the use that was to be made of it.

The amendment under discussion had been submitted by the United States delegation in accordance with the terms of the invitation which it had received to participate in the Conference. The United States delegation fully realised, however, that the Conference was free to take any decision concerning that amendment which it thought fit. He was impelled, nevertheless, to request that the Conference should proceed to a record vote on the question whether or not it would consider the amendment which the United States delegation had submitted.

The PRESIDENT recalled that, at the preceding meeting, he had ventured to appeal to the spirit of conciliation of his United States colleagues. The United States delegate had stated, in response, that it was impossible for him, at present, to reply to the questions the President had put to him, so long as the Conference had not shown that it was prepared to consider at least the principle of the United States proposal. He had added that his delegation thought that such consideration should, in any case, be given as an act of courtesy, quite apart from whether the Conference was in favour of the views expressed in the proposed amendment. The Conference would recall that the United Kingdom delegate, after hearing the statements made by Mr. Fuller and other delegates, had stated that, for his part, he was prepared to discuss the proposal.

It seemed to him that that would indeed be an act of courtesy, and since the President was the interpreter of the general opinion of the Conference, he thought he might reply that the Conference was, in fact, ready to examine the proposed amendment. That did not, of course, mean that it approved the amendment.

Moreover, merely by stating that they had no instructions on the matter, the delegations had already, to some extent, entered into a discussion on the principle of the amendment. The President proposed, therefore, that the Conference should continue the discussion.

Mr. FULLER (United States of America) thanked the President for having cleared up the situation. He understood that the United States amendment was to be considered.

<sup>1</sup> Document Conf. S.T.D. 2; Annex 3.

<sup>2</sup> For the text of the amendment, see page 18.

The principal question that had been raised with regard to the amendment appeared to relate to the words "to limit exclusively to medical and scientific purposes". Those words set forth the interpretation which his Government had, for almost a quarter of a century, placed upon the Hague Convention—an interpretation that was well known, had frequently been repeated, and had never been directly or effectively challenged. That phrase did not bring into the discussions any new subject.

Apart from the words to which he had referred, the United States amendment to Article 1 consisted in nothing more than phrasing, in what the delegation considered more effective and more expedient language, the ideas already set forth in the draft submitted by the Committee of Experts. The Conference might consider that phrasing better, or it might not. All that the United States delegation had asked was that consideration might be given to the suggestions it had offered in response to the invitation extended to it.

Everyone must have known that the United States Government, having been invited to participate in the Conference, would repeat that conception of the objects of the drug Conventions which it had never ceased to reiterate. However, if there were delegations present whose Governments had overlooked the well-known position of the United States Government, and had restricted their instructions to an extent that would not permit those delegations to discuss the phrase in question, the United States delegation was in agreement with the suggestion made by the delegates of Soviet Russia and of China that a possible solution for the situation might be found by embodying in the Convention optional texts of Article 1. It would seem that such a solution could be worked out in a practical manner, and accordingly Mr. Fuller supported the suggestion that a committee be appointed to enquire into the question and, if deemed advisable, to draw up possible alternative drafts.

M. DE VASCONCELLOS (Portugal) wished, in the first place, to thank the United States delegation for supporting the suggestion he had ventured to make.<sup>1</sup>

Mr. Fuller had said that his delegation would regard it as an act of courtesy if the Conference would discuss the United States amendment. M. de Vasconcellos wished to point out that various delegations had been obliged to make reservations regarding the principle involved in that amendment; that did not imply any discourtesy on their part towards the United States delegates. He was sure it was the desire of all delegations to extend sincere courtesy to all their colleagues, and he, personally, would never be deaf to such an appeal from his colleagues from the United States.

Moreover, the Conference had, he thought, already engaged upon a discussion of the United States amendment. In the course of the last two meetings, every aspect of that amendment had been considered and all the delegations had expressed their opinion. In actual fact, therefore, the act of courtesy had already been made, although, of course, some delegations had naturally been compelled to observe that the principle involved fell outside the scope of the Convention and could not be adopted as it stood.

The United States delegate had said he agreed with the suggestion that the amendment should be submitted to a drafting and conciliation committee. M. de Vasconcellos urged that that committee should be appointed forthwith, and he believed that all his colleagues would agree.

M. GASTELÚ (Ecuador) said that stricter measures than those enacted by the Government of Ecuador had been taken by very few Governments to control in their countries the importation, sale and use of the substances covered by the International Opium Conventions.

Since his Government had done its utmost to contribute towards the international campaign against addiction, it was unwilling to appear in the eyes of the world as an essentially egoistic Government, desirous merely of protecting its own nationals.

He had no hesitation in accepting the amendment submitted by the United States delegation, as it did not in any way exceed the scope of the Conference, which had itself full power to fix the limits of its competence.

The United States amendment appeared to allow each Government the right to enact its own laws and regulations for the purpose of reserving exclusively for medical and scientific requirements, not only opium derivatives, but also opium itself, whether in the form of raw opium or opium prepared for smoking.

The delegation of Ecuador would always be willing to accept any amendment to the draft Convention which, like the amendment submitted by the United States delegation, was designed to abolish the use of all drugs and substances expressly covered by the provisions of the International Opium Convention signed at The Hague on January 23rd, 1912, or the Geneva Convention of February 19th, 1925, or the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs, signed at Geneva on July 13th, 1931, and all other drugs and substances to which any provision of those Conventions was at present, or might in future, be applicable.

To the request of the United States delegation for a vote on its amendment, the delegation of Ecuador made an affirmative reply.

Should the Conference reject the amendment proposed by the United States delegation, the delegation of Ecuador would support the proposal of the Soviet delegate that it should be included as an optional clause in the Convention.

<sup>1</sup> See pages 24 and 25.



M. JIMENEZ (Chile) observed that the Conference had listened that morning and at the beginning of the afternoon's meeting to several delegates, all of whom had expressed, in varying degrees, their apprehensions in regard to the proposed amendment submitted by the United States delegation.

Some considered that the United States proposal should be purely and simply rejected, while others were of opinion that it should be examined by a small committee. The delegate of the Soviet Union had, he thought, indicated the right course to follow. The drafting committee proposed by Mr. de Vasconcellos, and accepted by the majority of the delegates, would examine the United States amendment, and ascertain whether it was possible to incorporate in the Convention under consideration the passages in the amendment which did not go beyond the scope of the Conference's programme.

The portion of the United States amendment which could not be included in the Convention might be inserted in the Final Act.

Proof would thus be given to their United States colleagues of the earnest desire of all the members of the Conference to arrive at the most favourable solution.

As delegate of the Chilean Government, he would be glad to participate in that solution, which all the delegates, inspired as they were by the desire to co-operate, wished to reach as soon as possible.

Mr. HARDY (India) said that the United States delegate had affirmed that there was no real divergence between the United States amendment and the provisions of the existing Conventions, according to the interpretation which the United States Government had always given to those provisions. Mr. Hardy wished, therefore, to refer to the actual wording of the relevant articles in the three Conventions.

In the Hague Convention of 1912, there were three chapters on "Raw Opium", "Prepared Opium" and "Medicinal Opium, Morphine, Cocaine, etc.", respectively. In Chapter I, it was provided (Article 1) that "the contracting Powers shall enact effective laws or regulations for the control of the production and distribution of raw opium", and specific restrictions were agreed upon in respect of its import and export. In Chapter II, Article 6, it was provided that "the contracting Powers shall take measures for the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium, with due regard to the varying circumstances of each country concerned . . .". He wished to stress that last phrase. Neither in Chapter I nor in Chapter II was there any suggestion of a limitation of use of the substance in question exclusively to medical and scientific purposes. Chapter III related solely to medicinal opium and to manufactured drugs.

In the Geneva Convention of 1925, the only reference to limitation of the kind in question appeared in Article 5 of Chapter III, a chapter which related solely to manufactured drugs.

In the Geneva Convention of 1931, in Chapter II on "Estimates", Article 4 read as follows: "Every estimate furnished in accordance with the preceding articles, so far as it relates to any of the drugs required for domestic consumption in the country or territory in respect of which it is made, shall be based solely on the medical and scientific requirements of that country or territory". The term "the drugs" was defined in Chapter I, Article 1, and that definition did not include raw opium, prepared opium or hashish.

Mr. Fuller would have the Conference believe that even in those Conventions it had been intended to apply the limitation in question to raw and prepared opium. In face of the facts, Mr. Hardy could not see how such an attitude could be maintained. The Government of India had never given such an interpretation to those Conventions, nor, he believed, had the other Governments specially concerned with the question of opium. He did not think that delegations could be expected to discuss a proposal in regard to which they had received no instructions whatever, and which contained an interpretation which was absolutely foreign to the terms of the Convention.

It was his duty to speak as representative of his Government, but, in the absence of instructions, any views he might now express on this proposal could only be personal ones. If he might venture unofficially to indicate those views, he believed that the new proposal would entail the immediate abolition of the whole monopoly in India, together with a complete prohibition of the use of opium. In 1918, the United States Government had aimed at setting a high example by prohibiting in its country the consumption of alcohol, and he did not think anyone could say that that experiment had been a conspicuous success. He believed, personally, that it would be dangerous for a country such as the one he represented to embark on a similar experiment in the case of opium.

M. DELGORGE (Netherlands) said he agreed with many of Mr. Hardy's observations.

He regretted that his delegation was unable to join in the procedure of conciliation. The aim of the Conference was to discuss a draft Convention on the illicit traffic; its terms of reference did not include a limitation of cultivation and of the use of narcotics to medical and scientific purposes. Mr. Fuller had said that the substance of his amendment was already contained in the existing Conventions. If that were so, it was not necessary to make further provision for it; if it were not so, then the matter was not one with which the Conference could deal.

M. Delgorge agreed, however, that, according to the wording of the letter it had received from the Secretary-General<sup>1</sup>, the United States Government had been fully entitled to put forward the

<sup>1</sup> See page 230.

amendment. The Netherlands delegation was very surprised that its Government had received no notice of that letter. On the other hand, Governments had been requested by the Secretariat to invest their representatives with special full powers to be able to agree to a very slight amendment to the Limitation Convention of 1931. If the intention had been to give so wide a scope to the present Conference, it would not have been necessary to require special instructions for the said purpose.

According to the instructions it had received, his delegation held that it would not be possible so greatly to widen the scope of the Conference as to discuss the proposal which the United States delegation had presented.

M. LÓPEZ-REY (Spain) recalled that his delegation had declared, in principle, that for formal reasons and not for reasons relating to the substance of the question, it was not in favour of an examination by the Conference of the United States proposal. Desiring, nevertheless, to show that utmost spirit of conciliation to which the President had referred, it would not oppose the consideration of the proposal by the Conference. M. López-Rey thought, however, that the Conference should decide whether the United States amendment was to be regarded as a substitute for Article 1 of the draft Convention, or whether the amendment should not rather be divided into two parts: on the one hand, paragraphs 1 and 2, which involved the question of principle, and on the other hand, paragraphs 3 and 4, which were in effect merely suggested modifications of Article 1. In any event, if the Conference considered that the United States amendment ought to be examined, the Spanish delegation was of opinion that the formal objections no longer applied, and, in substance, it was in favour of the United States proposal.

The PRESIDENT understood that the Conference had tacitly associated itself with the opinion he had ventured to express on its behalf in reply to the request of the United States delegate that the United States amendment should be examined. As the delegate of Portugal had pointed out, the Conference had, in fact, already entered into a discussion on the principle of the amendment.

When, at the preceding meeting, it had been proposed that a drafting and conciliation committee should be appointed, the President had observed that it would be difficult to appoint such a committee without first having taken a decision on the principle involved. Now that that decision had been taken, he would propose that the Conference should proceed to appoint the committee. The committee would examine the various amendments proposed, and would, in respect of its conciliation duties, be empowered to discuss the principle of the United States proposal and also any other principles that might be raised by other proposals. Possibly the committee might also discuss paragraph 2(b) of Article 1. He would suggest that the Bureau should nominate the members of the Committee.

*The President's proposal was adopted.*

M. DE REFFYE (France) said he had handed in to the Secretariat a number of formal amendments to Article 1. He would ask that those amendments be also examined by the Drafting and Conciliation Committee.

Mr. HARDY (India) said his Government desired to have an interpretation of the phrase in paragraph 2(b) of Article 1 "in contravention of national law". It was most important for his Government to know whether the terms of that paragraph would imply an obligation on its part to increase the control already exercised in respect of cultivation and production, a control which was really considerable. It would not, from the constitutional point of view, be possible to take any new measures until the consent of the provincial Governments had been obtained. If, however, the reference were only to existing laws, he did not think the terms of the paragraph would present any serious difficulties to his Government.

The PRESIDENT said he was not, as a rule, in favour of interpretations given by a single individual. If he ventured, therefore, to give an interpretation, it was subject to every reservation. It seemed to him, taking the wording of sub-paragraphs (a) and (b) in conjunction, that it was intended to provide under the latter sub-paragraph that cultivation and production should be punishable only in so far as they were contrary to national law—that was to say, the law, not only as it was in force at the moment of concluding the Convention, but also as it might subsequently be framed. He would stress, however, that that was a purely personal interpretation, and he thought that the point might be referred to the Drafting and Conciliation Committee.

The Bureau had proposed that the Drafting and Conciliation Committee should be composed of the delegates of the following countries: United States of America, United Kingdom, China, France, Japan, Poland, Portugal, Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

The President would also place his services at the disposal of the Committee.

*The composition of the Drafting and Conciliation Committee, as proposed by the Bureau, was approved.*

#### ARTICLE I (continuation): GENERAL DISCUSSION (continuation).

The PRESIDENT thought that certain delegates who had submitted amendments and who were not members of the Drafting and Conciliation Committee would wish to take the opportunity afforded by the plenary meeting to present observations with regard to their amendments. Some of those delegates might feel that their proposals were self-explanatory; others, however, might wish to offer explanations concerning their amendments and to develop reasons in support of them.



Colonel SHARMAN (Canada), referring to the amendment proposed by his delegation to Article 1, Section 1,<sup>1</sup> explained that the reason for the proposal was that provision had been made in the existing Conventions for including new drugs within their scope, whenever such was considered necessary. In the case of the present draft Convention also, provision should be made for such subsequent adjustment. Codeine, for instance, was covered by the provisions of the existing Conventions, although treated in a different manner from some of the other drugs. It was quite possible that codeine might shortly be placed in a different category in the 1931 Convention. Other drugs were covered only in respect of import and export—for instance, dionine. He did not know whether, in the case of the present draft Convention, it was intended to apply the same provisions to dionine as to the major drugs, such as morphine, heroin and cocaine. Perhaps the Drafting Committee might consider that point.

The reason for the proposal that in the opening sentence of paragraph 2, Article 1, the words "if wilfully committed" should be deleted was that it had been found necessary, in combating the illicit traffic in Canada, to dispense with that proviso. He noted that it had been made the subject of a vote during the meeting of the Committee of Experts.<sup>2</sup> In the last ten years, over 4,600 narcotic cases had been dealt with in the Canadian courts and, as the officer in charge of that work, he could assure the Conference that the authorities would have been hopelessly handicapped in eradicating drug trafficking if they had had to prove "wilful intent". The Canadian Parliament had fully appreciated the situation and the legislation in that respect had been framed accordingly.

In the first place, everything connected with the legitimate trade in, and the consumption of, narcotics was made dependent on a licence, and there was no possibility whatever of any innocent physician, or pharmacist, or a member of the community who legitimately received drugs through legal sources finding himself involved with the law. That safeguard having been provided, all other acts not covered by the licence were *ipso facto* illegal. Persons charged with illegal possession, if unable to produce a licence, were found guilty. Similarly, if charged with the illegal possession of drugs in a house, or in a vehicle, it was provided by Canadian law that the person in question should be deemed to be in illegal possession thereof, unless he proved that the drug was there without his knowledge or authority.

It had to be remembered that traffickers were both clever and unscrupulous. Many of them employed a number of men to make deliveries of the drugs to the various customers. Frequently, such "runners", as they were called, were themselves addicts who received their pay in the form of drugs. If the State had to prove "wilful commission", those men would claim, as, in fact, they used to claim, that they had no knowledge of the contents of the packages in their possession. The illicit traffic of that type would thus continue unchecked. It would, in his opinion, be most unwise for the Conference, by retaining the words "if wilfully committed", to set a standard below that which experienced narcotic officers had found to be absolutely essential, and which the Canadian Parliament had established and found necessary over a period of many years.

He quite appreciated the necessity, in normal circumstances, for the "liberty of the subject". The Conference had been called, however, for the purpose of attempting to establish measures for curbing a most vicious and despicable traffic, and the public as a whole had a right to be protected from the narcotic menace by whatever means were found essential.

With regard to the amendment to Article 1, Section 2, sub-paragraph (c), the Canadian delegation still adhered to the opinion it had always consistently expressed that the addition of the specific words "conspiracy" or "conspiring to" would greatly strengthen the Convention in relation to conditions actually encountered on the North-American continent. Conspiracy was a well-established offence in law, with a mass of jurisprudence built up in connection therewith. At the present time, the Canadian authorities had, for instance, two men under arrest for illegal possession. The circumstances which had led up to those arrests had involved an investigation extending over a number of months, before the source of the actual illicit morphine, which was being regularly delivered from ships, had been located. A review of all the facts then available had clearly indicated the culpability of three other men. After most careful consideration, both by trained narcotic counsel on the spot and by the Chief of the Narcotic Service, it had been unanimously decided that a charge of conspiracy against those three additional men was by far the most appropriate, if not the only, method of proceeding against them.

The experience of the Canadian authorities was entirely contrary to one opinion expressed at the meeting of the Committee of Experts in the preceding December that conspiracy was "an exceedingly difficult charge to prove, especially in the illicit traffic". Such procedure, in fact, possessed many definite advantages. If a person, against whom a charge of conspiracy in relation to a narcotic offence would normally lie, was charged instead with one of the more specific offences, such as importing or distributing, it was a matter of the utmost difficulty to introduce evidence at the trial which outlined the whole plot, without constant objections from the defence that such evidence had nothing to do with the accused. In a charge of conspiracy, however, as the Canadian authorities had found upon numerous occasions, it was possible to outline and prove, first the whole agreement, and next the part taken therein by each individual, and then definitely to outline the exact part played by the accused in such conspiracy.

<sup>1</sup> For the text of this amendment, see page 40.

<sup>2</sup> Document Conf. S.T.D.2, Annex 3.

There was also the very material objection to the exclusion of conspiracy from the Convention that, if it were not to be included, it might well be claimed as a fair inference that its exclusion had been intentional and that it was, in fact, a crime which it had not been desired to cover in the Convention. In other words, an accused person whom it was desired to extradite might claim that he was not guilty of any offence disclosed in the Convention, but that, if guilty of anything, his culpability was in relation to the crime of conspiracy, of which no mention was made in the Convention.

The Committee of Experts, in its report, had stated that it was its express intention that financing and organising should fall under Group (c).<sup>1</sup> Surely that intention might better be given effect by adding "conspiracy" specifically to the text, rather than by supplementing the latter by an intimation of what was intended, which intimation might well have no effect when the actual Convention was concluded.

M. LÓPEZ-REY (Spain) said that sub-paragraph (a) enumerated a number of acts which, in accordance with the rule of penal law *nullum crimen sine lege*, should be regarded as a limitative list. Only the acts specified in that sub-paragraph could form the subject of a charge.

The facts of life, however, went beyond human imagination or ambition, and there would always, therefore, be acts which should be liable to punishment but which were not covered by the law, though the purpose of the latter was to punish all illicit traffic in dangerous drugs in general. The question was probably one of interpretation, but was in any case very important and should, if possible, be avoided. It should be borne in mind that the Convention to be concluded ought to be such that no country could go outside its scope if it was to be consistent with the Convention.

Article 1 might be regarded as the *numerus clausus* of the Convention and should not be confused with Article 12, which merely left it open to each country to define (not create), prosecute and punish the offences referred to in Article 1. Article 12 was, in any case, subordinate to Article 1, in the sense of being a formal qualification.

If Article 1 gave a list of the offences covered by the Convention, it would be necessary to keep to that list. The question would then arise whether the list was really complete. M. López-Rey did not think it was. Take the possibility, not very exceptional, of a trafficker who, needing a drug and being unable to buy it, was lent a certain quantity by a friend on condition that he returned him double the quantity or, at least, an equal amount. Would such a case come under Article 1? He thought not. The same would apply to the case of making a gift of dangerous drugs.

Those instances showed the great danger inherent in any list of acts or offences. The difficulties were particularly serious in countries which, like Spain, did not admit of analogy, in principle, in penal law.

To obviate that danger, therefore, the Spanish delegation proposed that the list should be deleted and that sub-paragraph (a) should read as follows:

"Manufacture, conversion, extraction, preparation and possession of, and illicit traffic in, narcotic drugs contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs."

In that form of words, there were two quite different groups. The first included acts which had no connection with trafficking—namely, manufacture, conversion, extraction, preparation and possession—the second included traffic properly so-called—that was to say, all acts connected with the trade in dangerous drugs. The word "traffic" being an elastic expression, its use avoided the danger involved in an enumeration, and each country could include under it any acts connected with the traffic in dangerous drugs.

In the case of sub-paragraph (c), the Spanish delegation proposed the introduction of the idea of incitement and in addition that of complicity. The word "*assistance*" in the French text was practically unknown in criminal law terminology. With a few exceptions, all codes referred only to "*complicité*" not to "*assistance*". Moreover, the latter term was too vague; in criminal law, it was always necessary to be exact. He proposed to replace the word "*assistance*" by the customary term "*complicité*".

As regards the "attempts" referred to in sub-paragraph (e), it was technically impossible in criminal law to say "attempts which have reached the stage of a commencement", because in every code the word attempt meant a "commencement". The phrase, therefore, was unnecessarily and dangerously vague, and instead of clarifying the position gave rise to obscurity and doubt. The Spanish delegation therefore proposed to suppress the words in question and to draft sub-paragraph (e) as follows:

"(e) Attempts and, within legal limits, preparatory acts."

M. GORGÉ (Switzerland) disapproved of the procedure which was now being adopted. The Conference had begun by deciding to discuss Article 1, paragraph by paragraph, but, owing to the introduction of the United States amendment and the decision to refer that amendment for consideration to a special committee, various new issues had been raised, and the position was now one of inextricable confusion. He urged that the original procedure should be reverted to, and each paragraph of Article 1 discussed in turn.

On the proposal to refer the United States amendment to a special committee, he would point out that those members of the Conference who were not represented on that special committee

<sup>1</sup> Document Conf. S.T.D.2, Annex 3.

would be unable to state their views on the amendment in question or to hear the arguments for and against the various other amendments referred to that committee. That, he felt, was unfair to the other members in question. Amendments should be discussed in and by the Conference as a whole and not in a special Committee. The latter might be allowed to discuss the United States amendment and possibly sub-paragraph (b) of paragraph 2, but when that was done, Article 1 should be examined paragraph by paragraph in plenary session.

The PRESIDENT reminded the delegate of Switzerland that, as an old Dutch philosopher had said, nothing perhaps was altogether true. Presumably, if no amendment had been submitted by the United States delegation and no special Committee set up for its examination, the Conference would, in any case, have had to face a flood of amendments to Article 1. His original intention had been to discuss that article paragraph by paragraph, but the Swiss delegate himself would agree that it would be a practical impossibility to discuss in plenary session the large number of amendments tabled, many of them covering several paragraphs of the article, and all more or less inter-related. The natural procedure would have been to ask a drafting committee to analyse and report to the plenary Conference on the various amendments, so as to avoid unnecessary confusion.

He agreed with M. Gorgé that the delegates not represented on the special Committee were entitled to hear the statements made there in support of the various amendments proposed; and he would therefore invite the members of that Committee responsible for amendments to explain them in plenary session.

The advantage of his proposal would be that, while the special Committee was deliberating, the members of the Conference would be able to study, in the Minutes, the various arguments advanced for and against the amendments and be able to decide what attitude to take when the Committee's report came up for discussion. That, he suggested, was a better system than to open a discussion on the mass of amendments to the various paragraphs and sub-paragraphs of Article 1 with which the Conference was confronted.

M. GORRA (Egypt) wished to explain that the Egyptian delegation's amendment in document Conf.S.T.D.15 had only an incidental reference to Article 1 and could be equally well deferred for consideration later, when the final text of Article 1 was established. It would then be possible to see whether it needed to be embodied in a separate paragraph or whether it should form a distinct article of the Convention.

The Egyptian Government had taken it for granted that the penalties imposed under the Convention would be severe. Egyptian legislation already imposed very heavy penalties, and the Government was anxious that the Consular courts possessing extra-territorial jurisdiction in Egypt should apply identical penalties. From the previous discussion, however, he had gained the impression that it would be merely optional for national legislation to impose severe punishment for the offences enumerated in Article 1, paragraph 2; he had therefore considered it advisable to submit the amendment standing in his delegation's name. That amendment was not identical with, but it embodied the same principle as, Article 30 of the 1925 Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, which read :

"The High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake, in cases where the rules of this Convention cannot be enforced by the local courts as regards their nationals in such territory, to prohibit all action by such nationals contrary to the provisions of the present Convention."

If the Special Committee could confirm that the penalties imposed under the Convention would be as heavy as those inflicted in Egypt, his amendment would be unnecessary. The simplest procedure would, therefore, be to leave the amendment aside until Article 1 was finally drafted, and then decide whether, as already stated, the amendment should be embodied in a special paragraph or made into a special article.

Colonel SHARMAN (Canada) entirely agreed with the Swiss delegate that the procedure now being followed by the Conference was faulty. He had raised a question of principle which called for a decision by the Conference as a whole. That question had been referred to a Special Committee of which he himself was not a member, so that he would be unable to hear or deal with any objections raised by that Committee. The Committee's report also might not even mention the question. The same was true of the proposals advanced by members of the Special Committee itself. Not being present at the discussions, he would have no opportunity of expressing either his approval or his disapproval of those proposals. In such circumstances, Colonel Sharman must urge that all amendments on questions of principle should be discussed in plenary session.

M. GORGÉ (Switzerland) suggested the advisability of consulting the Conference on the best procedure to be adopted, in view of the fact that the system hitherto followed had been so keenly criticised. He did not consider that the number of amendments to Article 1 was at all abnormal. If members would refer to the texts of documents Conf.S.T.D.8, 9, 10, 12, 17 and 20, it would be seen that the amendments were, on the whole, short and straightforward. He urged that they

should be dealt with consecutively, as their reference to the Special Committee would in no way improve the situation but rather increase the difficulties before the Conference. He proposed, therefore, that a start should be made next morning on the discussion of Article 1, taking into account the amendments submitted. That procedure would also give the Drafting and Conciliation Committee an idea how the article should be finally worded. Under the present system, the delegates were giving, in turn, the views of their Governments on paragraphs which were quite different in nature and scope, so that at the end of a few speeches nobody knew where he was. There was no discussion, but only a series of independent statements, and the Conference was not drawing the necessary conclusions therefrom. This was regrettable, for each proposal should be retained and discussed.

The PRESIDENT reminded the Swiss delegate that it was the President's duty to see that the Conference lost no unnecessary time. M. Gorgé had said that the number of amendments was not very large, yet he had mentioned a document numbered S.T.D.20. Under the method advocated by the Swiss delegate, those who had proposed amendments to the different paragraphs and sub-paragraphs of Article 1 would have to explain those amendments, and their explanations would give rise to a more or less lengthy discussion, so that in the end the Conference might find the method too laborious and refer the whole question to a drafting committee.

As M. Gorgé himself would recollect, the President had frequently objected in the First Committee of the Assembly to the appointment of a drafting committee when there was any possible chance of settling the question otherwise. In the present case, he feared it could not be settled otherwise, except at the cost of a day's discussion. M. Gorgé, however, took the view that a day would be saved; therefore, the President, so that his conscience might be clear, would agree that the following morning should be devoted to a detailed discussion of Article 1 and the accompanying amendments, leaving the United States amendment to be considered by the Drafting and Conciliation Committee. It would then be clear whether other amendments would have to be referred back to that special Committee. An alternative method would be to examine all the amendments in the special Committee, but give the various proposers the right to attend and defend their proposals.

On due reflection and in order to meet the views of the Swiss delegate, he would propose that the Drafting and Conciliation Committee should still deal with the United States amendment, but that the Conference should first examine in plenary meeting Article 1 and the amendments relating thereto. When that was done, it would be clear whether some of those amendments would have to be referred to the special Committee also.

Dr. Hoo Chi-Tsai (China), in view of the President's acceptance of the proposal made by the Swiss delegate and supported by the Canadian delegate, thought it unnecessary to state why he supported that proposal. He would, however, point out that, as the United States amendment was very sweeping, it would be preferable to take a decision on it before considering Article 1 and the other amendments submitted. Even if the United States amendment were adopted only in part, with the omission, for instance, of some of the words in paragraph 2, it would change the present text of Article 1 and several of the other amendments would become superfluous. Would it not, therefore, be better if the Drafting and Conciliation Committee met first and disposed of the United States amendment, after which the plenary Conference would be in a better position to resume its discussions?

M. DE VASCONCELLOS (Portugal) feared that the proceedings of the Conference were becoming extremely confused. The United States amendment had been referred to a special Drafting and Conciliation Committee. If that Committee made extensive changes, how could the Conference discuss amendments to a non-existent text? Many of the amendments submitted might fall to the ground as being either identical or mutually contradictory. If amendments were to be discussed, it was by no means clear to what text they would refer.

The PRESIDENT asked the Conference to take a decision on the procedure to be followed. The Chinese delegate had now proposed an amendment to the President's suggestion to the effect that a decision should first be taken regarding the United States amendment as being the most far-reaching proposal submitted; a discussion could then be opened on Article 1, as thus redrafted, and the relevant amendments. Hence the final proposal before the Conference was that the Drafting and Conciliation Committee should meet the following morning and consider the United States amendment, reporting the result of its discussions to the plenary Conference, which would then open a final discussion on the various paragraphs of Article 1 with the relevant amendments.

*The procedure outlined by the President was adopted.*

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## FIFTH MEETING

*Held on Wednesday, June 10th, 1936, at 4 p.m.*

*President: M. LIMBURG.*

### 9. Examination and Adoption of the Report of the Credentials Committee.

The PRESIDENT announced that the Credentials Committee had terminated its examination of the credentials of delegates. He asked M. Pflügl, the first delegate of Austria, Chairman and Rapporteur of the Credentials Committee, to submit his report.

M. PFLÜGL (Austria), Chairman and Rapporteur of the Credentials Committee, submitted the following report:

"The Committee appointed by the International Conference called to conclude a Convention for the Suppression of the Illicit Traffic in Dangerous Drugs for the purpose of verifying the credentials of delegates, met on June 9th, 1936, at 2.45 p.m. in Room L in the Committee Building and appointed me its Chairman and Rapporteur.

"The Committee proceeded to examine the relevant documents of the delegations taking part in the Conference which have been communicated to it by the League Secretariat. It finds that the delegates of the following States hold full powers issued by the Head of the State:

"Austria, Brazil, United Kingdom, China, Denmark, Ecuador, Egypt, Greece, India, Japan, Netherlands, Poland, Roumania, Siam, United States of America.

"The delegate of the Irish Free State has submitted full powers issued by the President of the Council of the Irish Free State, Minister for Foreign Affairs.

"The full powers for the above countries relate both to the negotiations and the signature of the instruments to be concluded.

"Further, the Canadian Advisory Officer, in a letter of May 29th, 1936, has communicated a copy of the full powers issued by the Secretary of State for Foreign Affairs of the Dominion of Canada appointing a delegate and authorising him to sign. The original of these full powers has, however, been returned by the Canadian Advisory Officer to the Department for Foreign Affairs to be provided with the proper seal.

"The Government of the Union of Soviet Socialist Republics, in a telegram of June 5th, 1936, has appointed its delegate to represent it at the Conference and eventually to sign the Convention. The said Government states that regular full powers will be forwarded by post.

"The Bulgarian Government has appointed its delegate and authorised him to sign the Convention.

"The Committee considers that the last three delegates are authorised to sign the agreements to be concluded, subject, however, to their presenting regular full powers.

"The delegates of Honduras, Norway and Switzerland have submitted full powers issued by the Head of the State and, in the case of the Venezuelan delegate, by the Minister for Foreign Affairs, authorising them to take part in the work of the Conference.

"The Committee is unable to express any view as to whether the full powers of the delegates of the latter countries can be construed as authorising those delegates eventually to sign the instruments to be concluded. It asks the Conference, therefore, to be good enough to request the said delegates to state in what sense their full powers are to be interpreted.

"The delegates of the following States have been accredited to take part in the Conference by a letter or telegram addressed to the Secretary-General of the League of Nations, either by the Minister for Foreign Affairs or by the Permanent Representative accredited to the League of Nations:

"Afghanistan, Chile, Cuba, Czechoslovakia, France, Hungary, Iraq, Liechtenstein, Nicaragua, Peru, Portugal, Spain, Turkey, Uruguay, Yugoslavia.

"The Committee ventures to propose to the Conference to ask the delegates in this latter class of States who have not been accredited to sign the instruments which may be adopted by the Conference to be good enough to obtain the necessary document before the close of the Conference.

"The delegate of Panama, who has been appointed by a telegram of the Secretary of State for Foreign Affairs of the Republic, having submitted in the past full powers authorising him to sign instruments to be concluded under the auspices of the League of Nations, the Committee would be glad if the Conference would ask this delegate to be good enough to state whether he is authorised to sign any acts which might eventually be concluded.

"The Minister for Foreign Affairs of Finland has appointed a delegate to the Conference and has empowered him to act as an observer.

"The Permanent Delegate of Latvia accredited to the League of Nations has similarly appointed an observer to the Conference.

"The Committee ventures to stress the necessity of all delegates, who are not fully accredited to sign the instruments to be concluded, communicating as soon as possible to the Secretariat the documents in question in order to facilitate the work of the Conference."

The Rapporteur added that he had just been notified by the delegate of Portugal that full powers had been deposited authorising him to take part in the Conference. The documents in question would be examined at the next meeting of the Credentials Committee.

M. GORGÉ (Switzerland) had not studied the exact wording of the full powers issued to him, but as he was accredited as a delegate, he had authority to sign any instruments adopted. It was in that sense that his Government had accredited him. If it was thought necessary, he was prepared to obtain more precise full powers for the present Conference. In the case of Liechtenstein, which, as the Conference was aware, had a Customs union with Switzerland, he would obtain and submit the necessary documents.

*The report of the Credentials Committee was adopted.*

The PRESIDENT, speaking on behalf of the Conference, thanked the Credentials Committee for the work already done and asked it to continue in office for the time being. He suggested that the Swiss delegate should get in touch with the Rapporteur in regard to the points he had raised.

#### 10. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

##### ARTICLE I (continuation).

*Amendment proposed by the United States Delegation<sup>2</sup> (continuation) :*

*Report of the Drafting and Conciliation Committee.*

The PRESIDENT announced that the Drafting and Conciliation Committee had met in the forenoon to examine the United States amendment, and had taken a decision on the principle involved. The Committee had then, in agreement with the United States delegation, asked the latter to adapt the second part of its amendment to the various paragraphs of the draft Article I, so that, when the discussion of the latter was opened, it would be possible to discuss at the same time the United States amendments.

In order to give the United States delegation time to make those adjustments, it had been decided not to reopen the discussion on Article I until the following morning. The Conference, therefore, had now merely to decide whether or not it approved the decisions taken by the Drafting and Conciliation Committee, particularly as regarded the principle underlying the United States amendment. He asked M. Soubotitch (Yugoslavia), who had been appointed Rapporteur, to submit his report.

M. SOUBBOTITCH (Yugoslavia), Rapporteur of the Drafting and Conciliation Committee, reminded the Conference that, at its last meeting, it had decided to appoint a special Committee to make a close examination of the United States amendment. The special Committee had met during the morning, under the chairmanship of the President, and had instructed M. Soubotitch to give the Conference an oral report on its proceedings and the results achieved.

The United States delegation's amendment was a general amendment, modifying the whole of Article I. The special Committee had immediately noted that, as drafted, it fell into two different parts. The first part was that comprising the first sentence in paragraph 2 :

"Each of the High Contracting Parties agrees to enact effective laws or regulations to limit exclusively to medical and scientific purposes the narcotic drugs and substances to which this Convention relates, and any plant or substance or material from which the said narcotic drugs or substances may in any manner be obtained . . ."

This part of the amendment constituted a distinct departure from the text of the experts, while the rest of the amendment seemed to be rather a redraft of Article I, as proposed by the Committee of Experts.

The Drafting and Conciliation Committee, accordingly, had decided to consider the two parts of the amendment separately, and had arrived at different conclusions regarding each of those parts.

In the case of the first part, the Committee had been virtually unanimous in finding that the idea underlying the new text went beyond the framework of the draft Convention, which was intended to provide penalties for breaches of the provisions of the 1912, 1925 and 1931 Conventions. The Committee had, accordingly, felt that the ideas embodied in that part of the United States delegation's amendment could not be included in the text of the Convention, but, in a spirit of compromise and in order to extract the greatest possible advantage from those ideas, two possibilities had been considered. The proposal in question might either be embodied in an optional clause of the Convention, which the signatory States might, or might not, sign and ratify, as they thought fit, or it might be transformed into a recommendation.

<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>2</sup> For the text of the amendment, see page 18.



The former of those possibilities did not meet with the approval of the majority of the special Committee, mainly for the following reasons. The framing of such an optional clause did not really fall within the powers of the present Conference, even though the value of the principle embodied was fully recognised. In the second place, even if such an optional clause were framed, it was unlikely that it would be universally adopted. The most striking argument, however, advanced against the first possibility had been the complexity of the problem involved. As at present worded, the United States delegation's proposal would need very detailed and protracted study and would thus have to be given special consideration apart from the other parts of the draft Convention which had already been examined by the various Governments. For those reasons, in particular, the Committee had finally decided not to make the proposal in question the subject of an optional clause.

As to the second possibility, that of embodying the United States proposal in a recommendation, there was almost unanimous agreement, and the special Committee therefore proposed, subject to the approval of the plenary Conference, that a recommendation embodying the proposal contained in the first part of paragraph 2 of the United States delegation's amendment should be prepared. A Drafting Committee for that purpose had already been appointed and, if the principle were now approved, the President could convene that Drafting Committee and ask it to prepare a text for submission to the plenary Conference.

As to the remainder of the United States delegation's amendment, the Drafting and Conciliation Committee proposed, in agreement with the United States delegation, that the proposals therein contained should be discussed simultaneously with the other amendments to Article 1.

The PRESIDENT, on behalf of the Conference, thanked the Rapporteur for the clear and full report so expeditiously submitted. He proposed that the Conference should endorse the decision taken by the Special Committee and that the Drafting Committee be asked to prepare the text of a recommendation embodying as much as possible of the principle underlying the first part of the United States delegation's amendment.

Mr. DOWSON (United Kingdom) wished to make the position of his delegation perfectly clear. In agreeing to the principle that an attempt should be made to conciliate the United States delegation, the United Kingdom delegation reserved the right to reconsider its position in the light of the actual terms of the recommendation to be drafted.

Mr. HARDY (India) rose to a point of order. As he understood the proposal submitted, the recommendation, when drafted, would be inserted in the Final Act. He wished to know whether, if the Government of India disapproved of the recommendation, and if the latter were adopted by the majority of the Conference, the Government of India could sign the Convention without signing the Final Act.

M. GORGÉ (Switzerland) pointed out that the Final Act was merely a summary of what had occurred at the Conference and, as such, did not require ratification.

The PRESIDENT, in reply to the delegate of India, confirmed that, though it was customary for all the States taking part in a diplomatic Conference to sign the Final Act, any State could, in doing so, enter a reservation regarding any recommendation contained therein.

M. BOURGOIS (France), not being a member of the Drafting and Conciliation Committee, wished to point out the necessity for some modification of the following words in paragraph 2 of the United States amendment:

" . . . and any plant or substance or material from which the said narcotic drugs or substances may, in any manner, be obtained."

Hashish could be extracted (although, in practice, this was not done owing to the reduced amount obtained) from most of the varieties of Indian hemp used in the textile industry; the poppy plant also was used for many purposes (cattle food, oil, etc.) which were not medical or scientific. It appeared that Laevo-cocaine which fell under the Convention could be prepared synthetically from certain "substances" other than the coca leaf. It was not possible, therefore, to reserve for medical uses only "any plant or substance or material from which the said narcotic drugs or substances might in any manner be obtained". The text would have to be modified.

M. DE VELICS (Hungary) reminded the Conference that, though Hungary was interested in the production of poppy straw for the extraction of morphine, the poppy itself was a harmless plant, widely used in that country as food. That point should be borne in mind, and the recommendation drafted so as to be acceptable to countries where those customs prevailed.

The PRESIDENT suggested that the delegates of France and of Hungary should get into touch with the Drafting Committee with regard to the respective points they had raised.

M. DELGORGÉ (Netherlands) regretted that he was unable to agree to a recommendation limiting the use of drugs and raw materials. He did not propose to criticise the detailed wording of the recommendation, as it was the principle of limiting the cultivation of raw materials and the

use of drugs to which he objected. In his view, the matter was one quite outside the scope of the Conference, whose sole concern was the suppression of the illicit traffic. The question of limitation was not so simple as it appeared and called for thorough examination. Moreover, it was proposed shortly to convene a Conference to study how far it was possible to introduce such limitation. For those reasons, he could not accept the suggestion to embody the United States delegation's proposal in a recommendation in the Final Act.

The PRESIDENT called for a vote by a show of hands on the proposal of the Drafting and Conciliation Committee to insert in the Final Act a recommendation embodying the principle underlying the first part of the United States delegation's amendment.

On a vote being taken, 20 delegations voted for, and 2 against, the proposal, 8 delegations abstaining.

*The PRESIDENT declared the proposal of the Drafting and Conciliation Committee adopted.*

Mr. ANSLINGER (United States of America), on behalf of the United States delegation, expressed appreciation of the courtesy shown by the Conference, more particularly by the delegates of China, Uruguay and the Union of Soviet Socialist Republics in the Drafting and Conciliation Committee, in agreeing to incorporate in an optional clause the principle at the root of the United States delegation's amendment. Disappointment was naturally felt that the traditional policy advocated by the United States of America would not be embodied in the Convention itself, but he was gratified that it would be expressed in a recommendation.

It would have been noted that, both in the Drafting and Conciliation Committee and in the plenary meeting, the United States delegation had abstained from expressing an opinion regarding a recommendation in the Final Act. There were two reasons for that attitude: in the first place, it had always been the experience of the United States authorities that recommendations inserted in Final Acts of Opium Conventions were seldom carried out; in the second place, countries which agreed to support the principle underlying the United States delegation's proposal could enter a reservation embodying this principle.

He would like the records of the present meeting to contain the following extracts from resolutions adopted by League organisations. In 1923, the Advisory Committee had, subject to reservations entered by France, Germany, Great Britain, Japan, the Netherlands, Portugal and Siam, endorsed the following proposal:<sup>1</sup>

"If the purpose of the Hague Opium Convention is to be achieved according to its spirit and true intent, it must be recognised that the use of opium products for other than medicinal and scientific purposes is an abuse and not legitimate."

In the same year, the fourth Assembly had adopted a resolution to the following effect:

"The Assembly, having noted with satisfaction that, in accordance with the hope expressed in the fourth resolution adopted by the Assembly in 1922, the Advisory Committee has reported that the information now available makes it possible for the Governments concerned to examine, with a view to the conclusion of an agreement, the question of the limitation of the amounts of morphine, heroin or cocaine and their respective salts to be manufactured; of the limitation of the amounts of raw opium and the coca leaf to be imported for that purpose and for other medicinal and scientific purposes; and of the limitation of the production of raw opium and the coca leaf for export to the amount required for such medicinal and scientific purposes, requests the Council, as a means of giving effect to the principles submitted by the representatives of the United States of America, and to the policy which the League, on the recommendation of the Advisory Committee, has adopted, to invite the Governments concerned to send representatives with plenipotentiary powers to a conference for this purpose, to be held, if possible, immediately after the conference mentioned in resolution V."

Mr. Anslinger added that his delegation had decided, in order to expedite the work of the Conference, to submit no further amendments to Article I, but to confine itself to making certain observations.

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<sup>1</sup> See the report to the Council on the work of the fifth session of the Advisory Committee, document C.418.M.184.1923. XI, annex 14.



## SIXTH MEETING

*Held on Thursday, June 11th, 1936, at 10.30 a.m.*

*President : M. LIMBURG.*

### 11. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE 1 (continuation).

##### *Paragraph 1.*

*1. In the present Convention, the expression "narcotic drugs" is understood as meaning the drugs and substances covered by the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931.*

##### *Amendment proposed by the Delegation of the United Kingdom.<sup>2</sup>*

The PRESIDENT announced that the United Kingdom delegation had agreed to postpone the discussion of its amendment until the Conference discussed the articles containing the formal clauses, which would seem a more suitable moment for discussing the applicability of the Convention to the colonies, territories and protectorates of the contracting parties.

##### *Amendment proposed by the Portuguese Delegation.<sup>3</sup>*

The PRESIDENT recalled that the Portuguese delegation proposed to put into separate articles the text of each of the paragraphs of Article 1. After an exchange of views with the President, the Portuguese delegation had agreed that the discussion of its proposal should be postponed until after the discussion of the different paragraphs of Article 1, so as to see what form Article 1 finally assumed and to what extent the proposed amendment was opportune.

##### *Amendment proposed by the Canadian Delegation.<sup>4</sup>*

"To replace the words 'covered by the provisions of' by the words 'within the scope, or which may subsequently be brought within the scope of'."

The PRESIDENT pointed out that the Canadian delegate had already explained his amendment at the fourth meeting.<sup>5</sup>

M. KOUKAL (Czechoslovakia) agreed, in principle, with the Canadian amendment as a means of avoiding the necessity for supplementing the Convention in the near future; but he was not satisfied with the form of the amendment. Its effect was to make the Convention applicable, not only to the drugs and substances covered by existing Conventions, but also to all substances capable of coming under those Conventions. There were substances not at present covered by the existing Conventions, but liable to come under them later in the event of the existing Conventions being extended. The same idea was embodied in the United States delegation's proposal,<sup>6</sup> where it was expressed in more precise terms. M. Koukal proposed, therefore, to keep the idea which formed the basis of the Canadian amendment while expressing it in the terms used by the United States delegation, namely :

"In the present Convention, the term 'narcotic drugs' shall apply to all the drugs and substances expressly mentioned in the International Opium Convention . . . and to all other drugs and substances to which any provision of any of the said Conventions is now, or hereafter may be, applicable."

M. DA MATTA (Portugal) thought the text of the revised draft Convention, as submitted to the Conference, distinctly better than the texts proposed by the Canadian and United States delegations, neither of which seemed to him to be useful. The insertion of the word "expressly" in the American amendment seemed unnecessary, for, if the drugs and substances were "mentioned", they were expressly mentioned. The United States delegation had probably meant to say "*specifically* mentioned"—that was to say, mentioned by name or referred to under a general mention. The text of the revised draft Convention was better and more explicit, since

<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>2</sup> Document Conf. S.T.D. 21.

<sup>3</sup> Document Conf. S.T.D. 17.

<sup>4</sup> Document Conf. S.T.D. 8.

<sup>5</sup> See pages 32 and 33.

<sup>6</sup> See page 18.

it must not be forgotten that paragraph 1 of the draft was supplemented by the provisions of the previous Conventions to which it referred. The drugs and substances mentioned in the draft Convention were enumerated specifically in Article 4 of the 1925 Convention, to which paragraph 1 referred. Moreover, Article 10 of the 1925 Convention provided for the extension, in accordance with a prescribed form of procedure, of the provisions applicable to dangerous drugs to all such narcotics not mentioned by the Convention as the competent health authorities recognised as being liable to give rise to similar abuses and to produce effects as harmful as those produced by the substances mentioned in the Convention. The reference in the draft Convention was precise enough therefore, since it covered both the substances specifically mentioned in Article 4 of the 1925 Convention and the substances covered by the general mention in Article 10 of that Convention.

M. GORGÉ (Switzerland) thought it was a question of drafting rather than substance. The idea on which the Canadian amendment was based was shared by all delegations. None of the suggested texts appeared to him satisfactory. He would like to draft paragraph 1 as follows :

*"In the present Convention, 'narcotic drugs' shall be deemed to mean all drugs and substances to which the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931, are now, or hereafter may be, applicable."*

Dr. Hoo Chi-Tsai (China) also felt that all delegations were agreed that the Convention should be applied to the substances at present mentioned in existing Convention, as well as to substances which might be so mentioned in the future. Though he agreed with the Swiss delegate's attitude, he thought the wording proposed by the latter, as also the amendments of the Canadian and United States delegations, might give rise to a legal difficulty. All three texts meant, if literally interpreted, that, on the entry into force of the proposed Convention, it would be necessary to apply it to substances which, though not mentioned in existing Conventions, might, in the future, fall within the scope of those Conventions. That interpretation, though contrary to the spirit, was in accordance with the letter of the proposed Convention. He accordingly suggested the retention of Article 1, paragraph 1, of the revised draft Convention, with the addition of the following words :

*"The said term shall further include such new drugs and substances as may come under the said Conventions."*

Mr. DOWSON (United Kingdom) thought that the text of the revised draft Convention, when taken in conjunction with Articles 4 and 10 of the 1925 Convention, was preferable to the text of the proposed amendments.

He must add that he felt the Conference was transforming itself into a drafting committee, and that much time would be lost if it were to discuss all amendments in the plenary meetings. He suggested the appointment of a committee, to act both as a legal committee and as a drafting committee, to consider questions such as those with which the Conference was at present concerned. The committee should be composed, he suggested, mainly of jurists of the delegations represented at the Conference.

M. DA MATTA (Portugal) supported the United Kingdom delegate's proposal for the submission of the questions at present under discussion to a committee of jurists to prepare the text of Article 1, paragraph 1, for submission to the plenary meeting of the Conference.

At the same time, he could not but point out that the proposals of the Swiss and Chinese delegates added nothing to Article 1, paragraph 1, of the revised draft Convention, considering that the paragraph in question was supplemented by Article 10 of the 1925 Convention.

The PRESIDENT reminded the Conference that when he proposed at a previous meeting<sup>1</sup> to appoint a drafting committee to consider amendments, the Conference had been of the opinion that amendments should be discussed in the plenary meeting. If a drafting committee were appointed at once, no decisions of principle would be taken on any amendment.

He himself suggested that the Conference should first see whether it could arrive at definitive decisions of principle, and then appoint a drafting committee. In view of the number of amendments proposed to paragraph 1 of Article 1, it looked as if a second reading of the article would be required before deciding as to the form it should take.

M. DE VASCONCELLOS (Portugal) thought the plenary meeting of the Conference must consider, at a first reading, all the amendments submitted, though without taking any decision. It could then refer the amendments to a drafting committee, and the latter could draft texts for submission to the Conference in the light of the views expressed at the plenary meeting. That was the only practical solution.

M. GORRA (Egypt) thought the amendments of the Swiss and Chinese delegates were clearer than the revised draft Convention. If, as would appear to be the case, it was merely a question of form, all the delegates being apparently in agreement as to the substance of the matter, the

<sup>1</sup> See pages 34 and 35.

Conference might adopt either of the amendments in question. If, on the contrary, it were a question of substance, the Swiss and Chinese delegates should explain the purpose of their amendments.

The PRESIDENT, referring to the Portuguese delegate's contention that the Conference should not take any decision of principle on the amendments in the plenary meeting, was not of that opinion. He thought the Conference should take a decision on all amendments of principle, and that the question of penalties should be discussed in plenary meeting. As it had been proposed to set up a committee of jurists, he suggested that amendments on points of drafting should be referred to that committee, on the express condition that there should be no previous discussion on the question whether particular amendments were amendments of principle or not. If the Conference accepted his proposal, the Canadian, Swiss and Chinese amendments, which were amendments of form—since all the members of the Conference were agreed as to the substance—would then be referred to the proposed committee.

*The President's proposal was adopted.*

*Paragraph 2. Introductory Sub-Paragraph.*

*2. Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other form of deprivation of liberty, the following acts if wilfully committed—namely:*

The PRESIDENT said that four amendments had been submitted.

(a) *Amendment proposed by the Canadian Delegation.*<sup>1</sup>

"To delete the words 'wilfully committed'."

(b) *Amendment proposed by the Polish Delegation.*<sup>2</sup>

"To delete the words 'particularly by imprisonment or other form of deprivation of liberty', as the expression 'severely punishing' is sufficient and implies imprisonment."

(c) *Amendment proposed by the Portuguese Delegation.*<sup>3</sup>

"To delete the word 'necessary' and substitute for the expression 'other form' the words 'other penalties'."

(d) *Amendment proposed by the Sianese Delegation.*<sup>4</sup>

"To replace the words 'particularly by imprisonment or other form of deprivation of liberty' by the words 'in accordance with the penal system of national legislation'."

M. DA MARTA (Portugal) explained that his delegation's amendment, having been referred to the Committee of Jurists, no further comment was required from him.

The other amendments which he would examine dealt with points of substance. In particular, the Canadian amendment proposed to omit the words "wilfully committed". Reference to previous stages in the drafting of the present text of the Convention<sup>5</sup> showed that the original text embodied the conception of intention ("intentional violation"). In the second draft of the text, there was another wording—viz., "offences wilfully committed". Finally, the present text used the expression "the following acts if wilfully committed".

The effect of the Canadian amendment would be to revert to the wording of the second draft, with the result that all acts voluntarily committed would be punished, not merely when committed with criminal intention, but even when committed by mere error or negligence. He would be glad to know if he interpreted aright the spirit of the Canadian proposal, and whether the Canadian delegation had in view offences in which fraud was a specific element—if so, that should be made clear in the Convention—or whether the purpose of the amendment was to punish any offence, whatever its character. In the latter case, M. da Matta could not support the proposal. The report of the experts and observations of the Governments showed the difficulties which would arise if the attempt were made to punish cases of fraud or criminal intention, and other cases as well. Moreover, that conception was alien to several criminal codes, including the Portuguese code.

M. TREBICKI (Poland) said he had already pointed out that the Polish amendment was one of pure form. The Polish delegation was not in any way opposed to severe penalties, but it seemed to it sufficient to retain the expression "severely punishing", which, according to the law of many countries, implied imprisonment.

<sup>1</sup> Document Conf. S.T.D. 9.

<sup>2</sup> Document Conf. S.T.D. 12.

<sup>3</sup> Document Conf. S.T.D. 17.

<sup>4</sup> Document Conf. S.T.D. 16.

<sup>5</sup> Document Conf. S.T.D. 1, Annex 2.

With regard to the Canadian amendment, the Polish delegation agreed with the Portuguese delegation that it would be difficult to include under the definition offences committed merely by negligence.

Phya RAJAWANGSAN (Siam) said that Siam had consistently co-operated in all the earlier Conferences of this character and was desirous of doing so in the present one. Siam had several times amended her legislation in order to conform to the successive requirements of the international Conventions and local conditions, and also to meet the general wishes expressed by the Advisory Committee. A recent example was the new law concerning opium, promulgated in November 1935, raising the term of punishment for illicit traffickers from two to ten years' imprisonment. In the Siamese Government's opinion, Siamese legislation in these matters at the present time was sufficient to meet all local necessities, even including questions of import and export, in connection with which foreign countries were likely to be affected.

The measures above mentioned had all been taken in conformity with the principles adopted by Siam in her civil and penal system of legislation: but the draft Convention contained provisions of a legal or administrative character which, if adopted as they now stood, would seem to impose on Siam the obligation, not only of modifying her present code, but also of changing principles underlying certain provisions of existing Siamese laws. This, in the Siamese Government's opinion, did not seem feasible at the present time.

It was in order to avoid the difficulties referred to that the Siamese delegation had proposed its amendment.

With regard to the other points of Article 1, the Siamese delegation was carefully considering the amendments presented by other delegations, and reserved its right to submit, if necessary, its point of view at the proper moment.

His country had adopted a system for the codification of laws about thirty years ago, and had just finished it last year. Many national laws were based on certain juridical principles, and he was afraid that an obligation might be incurred under which some of those principles might have to be changed. The Siamese Government was fully prepared to co-operate in the campaign against the illicit traffic, but it was anxious to avoid having to modify the principles to which he had referred.

Dr. SCHULTZ (Austria) supported the Portuguese proposal to omit the word "necessary".

With regard to the Canadian amendment, he reminded the Conference that, during the discussions of the Committee of Experts, the question had already been raised whether the notion of acts committed "wilfully" should be maintained. He had spoken in favour of its retention and had been supported by most of the members of the Committee. The Canadian amendment had now raised the question anew. On behalf of the Austrian delegation, he could not do otherwise than maintain his previous opinion, which was based on the fact that the question was one of combating international crime. The insertion of the notion of wilful acts should not be taken to mean that Governments would be unable severely to punish acts resulting from imprudence or negligence, but in such cases punishment would be applied according to national laws. The machinery of an international agreement would only come into action in the case of serious acts—that was to say, acts committed wilfully—particularly as in that connection the question of extradition was also raised (Article 5).

As far as Dr. Schultz was aware, extradition had never yet been proposed in connection with acts due to imprudence or negligence. Such offences, according to present law, could only be punished with relatively light sentences as compared with the sentences inflicted for intentional acts. Paragraph 1 of Article 5 laid down that the contracting parties undertook to deem "the offences referred to in . . . Article 1 to be included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded . . .". If the words "wilfully committed" were omitted, acts due to imprudence or negligence would be regarded as coming within the scope of extradition treaties, which was absurd. The only result of extending the Convention to such acts would be to weaken it, and he was therefore absolutely opposed to such an amendment.

On the other hand, Dr. Schultz was in favour of the Polish and Siamese amendments. Without being opposed to sentences of imprisonment or other punishment involving loss of personal liberty, he thought it by no means indispensable to tell Governments exactly what punishments they would be undertaking to inflict for offences of this kind. It would be seen from Article 5 that every Government party to the Convention must know that the offence was sufficiently grave to entail the most serious punishment provided under national law. Moreover, in the present state of civilisation, it was commonly admitted that, apart from the death sentence, imprisonment, or some other sentence involving loss of personal liberty, was the severest. Moreover, this punishment had the great advantage, from the point of view of the community, of preventing the offender, so long as he was in prison, from engaging in his nefarious practices. It was manifestly unnecessary, then, to insert in the Convention a special clause concerning the nature of the punishment to be inflicted.

His Government had already accepted the text of the draft Convention as it stood, but if it were allowed a choice, it would prefer the amended text proposed by the Polish and Siamese delegates.

M. LACHKEVITCH (Union of Soviet Socialist Republics) had not quite understood the reasons put forward in support of the Polish delegation's amendment. Was the idea simply to have as short a text as possible or—as the Siamese delegation proposed—to leave a greater latitude to

Governments? Personally, he did not regard as conclusive the argument that the expression "severely punishing" included imprisonment. How and why should it include imprisonment? At any rate, the Soviet delegation could not so interpret it in every case. For the Soviet delegation, and for the representatives of other countries in which punishments were not divided into two classes as being severe or not severe, the expression was little more than a sort of commentary. If the aim were to shorten the article at all costs, he would prefer the omission of the word "severely", maintaining, on the contrary, the indication concerning the nature of the punishment to be inflicted. He had not submitted any amendment, because he felt that amendments should only be put forward in cases of absolute necessity and because the text of the draft gave him complete satisfaction.

With regard to the expression "wilfully committed" and Dr. Schultz's observations on that subject, M. Lachkevitch would draw the Conference's attention to the fact that paragraph 4 of Article 5 allowed a contracting party to refuse to extradite if the act were not of a sufficiently serious nature. An act committed unintentionally might, however, always be so described. It must be admitted that the present Convention tended to secure the minimum degree of punishment acceptable to all the States present at the Conference. If any country, by reason of its national laws, found it difficult to include in the Convention the notion of acts committed intentionally, there were good reasons why this difficulty should be overcome by omitting the words in question. For his part, however, he accepted the present text.

Dr. VAN ANGEREN (Netherlands) said that, of all the amendments under discussion, the Canadian amendment seemed to him to be the most radical and far-reaching. In this connection, he reminded the Conference that, in the original draft Convention, no distinction was drawn between acts committed intentionally and other acts. He had argued, for reasons derived from the various national penal codes and laws, that this distinction had to be made. In the Netherlands, an act against the narcotics law, if committed intentionally, was regarded, not as a minor offence, but as a crime (in French, *in delict*), and as a crime, an act committed *in dolus*, it involved severe penalties, including imprisonment. It was, moreover, a principle of the Netherlands Penal Code that only attempts to commit a crime, in the technical sense of the word, were punishable and not attempts to commit a minor offence (in French *contravention*). Besides, it was hardly conceivable that anybody would attempt to commit an act which he had not intended to commit. Offences against the narcotics laws must be regarded as serious and could be severely punished. Nevertheless, an act due to mere carelessness, even if the result were serious, could not be punished in the same way as an act committed with design or criminal intent.

He drew the Conference's attention to the difficulties which would arise in the matter of extradition in cases in which criminal intent was lacking. The Netherlands Government would strongly object to the granting of extradition in such circumstances. That being so, the Netherlands delegation insisted that the Conference should not endorse the Canadian amendment.

With regard to the Polish amendment, he wondered whether there had not been some misunderstanding. In the draft as revised by the Committee of Experts, the words "by a sentence" were already deleted. The Polish and Siamese amendments seemed to him likely to weaken the efficacy of the Convention, and it was to be presumed that many Governments would not, therefore, in the light of these considerations, be able to consider them.

*The continuation of the discussion was adjourned to the next meeting.*

## 12. Appointment of a Drafting Committee of Jurists.

*The Conference decided to appoint a Drafting Committee consisting of the following members:*

Mr. DOWSON (United Kingdom), M. KOUKAL (Czechoslovakia), M. CONTOUMAS (Greece), M. DA MATTA (Portugal), M. GORGÉ (Switzerland), M. SOUBBOTITCH (Yugoslavia).

The President placed himself at the Committee's disposal.

## 13. Communication on behalf of the International Criminal Police Commission.

The PRESIDENT said that Mr. Norman Kendal, Assistant Commissioner of the London Metropolitan Police and a member of the International Criminal Police Commission, who was obliged to leave Geneva, wished to make a statement concerning Article 1 as a whole.

Mr. KENDAL (International Criminal Police Commission) said he had just come from the twelfth session, held in Yugoslavia, of the International Criminal Police Commission. He thanked the President for allowing him to say a few words concerning the views of the members of that Commission.

Nearly all the countries of Europe had been represented at the session in question by persons who, in their own countries, were responsible for conducting and supervising investigations and the preparation of proceedings in drug traffic cases. Those persons, many of whom had collaborated with certain delegations present in preparing for the present Conference, all considered that the system laid down in the draft Convention would help them to carry out their task.

Naturally, Mr. Kendal did not claim that every word of the present draft was perfect; on the contrary, he thought that one or two provisions, regarding which there might be definite divergences of opinion, might be dropped (he had in mind, for instance, sub-paragraph b of paragraph 2 concerning cultivation), if that would speed up the signing of the Convention. As a matter of fact, his colleagues had asked him, on their behalf, to appeal to the representatives of

the countries in conference not to insist on demands which other delegations might regard as premature or excessive, and thus compromise the result or delay the final conclusion of an international convention.

That appeal was made on behalf of the very persons who, in actual practice, were engaged in combating the drug traffic. They had their heart in their work, and hoped and believed that they would be in a better position to carry out their duties when the Convention had been adopted. He begged the delegations to bear that appeal in mind. He could say in all sincerity that, for their part, the members of the International Criminal Police Commission would endeavour to secure the best possible results in execution of that Convention, and they thought that their suggestions would lead to practical results in the campaign they were all waging against the abuse and improper use of dangerous drugs.

Mr. Kendal was obliged to leave Geneva immediately for reasons beyond his control. If, later on, the delegations needed any additional details, Dr. Schütz could furnish impartial and clear information concerning the views of the members of the International Commission.

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## SEVENTH MEETING

*Held on Thursday, June 11th, 1936, at 3.30 p.m.*

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*President : M. LIMBURG.*

### 14. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation)

#### ARTICLE I (continuation).

##### *Paragraph 2 : Introductory Sub-Paragraph (continuation).*

Mr. DOWSON (United Kingdom), referring to the proposal of the Canadian delegation,<sup>2</sup> thought that the omission of the words "if wilfully committed" would alter the substance of Article 1 to a greater extent than might at first sight appear. The effect would be to bring within the scope of this article any offence, irrespective of whether it might consist only of a minor breach of the law, due to negligence or inadvertence. The offences referred to in this article were not only to be punished severely but were also to be regarded as cause for extradition. A doctor or a chemist, for instance, who had committed a minor offence through pure inadvertence, should not be liable, even theoretically, to extradition.

He thought that Colonel Sharman's contention was based on a misapprehension. It would always be open to every country under its internal legislation to make what provision it pleased in respect of prosecution and punishment and onus of proof.

M. GORGÉ (Switzerland) said his delegation attached great importance to retaining the words in question. Intention must continue to be a constituent element in the offence. The draft Convention was not designed to punish "severely" offences committed through negligence or inadvertence. It was essential that acts punishable severely under an international agreement should have been committed wilfully. Under the draft Federal penal code, which had been in the making for about forty years "except where otherwise expressly provided in the law, only offences committed wilfully shall be punishable". The draft explained that "a person shall be deemed to have committed an offence wilfully if he committed it *knowingly and intentionally*". M. Gorgé believed that this principle was the one most generally adopted; it should accordingly be retained in the Convention.

He pointed out to the delegate of Canada that it was open to any country to go further than the Convention and omit intention as a constituent element in the offence. The provisions of Article 12 should always be considered in conjunction with those of Article 1. Whether the conception "wilful" was omitted or not, national law would always prevail in the matter. For the reasons stated, however, it would be preferable specifically to refer to acts committed wilfully.

With regard to the Portuguese proposal to delete the word "necessary"<sup>3</sup>, M. Gorgé was convinced, personally, that in this context the word had no real significance, but merely served as a link. It was solely a matter of style.

M. DA MATTA (Portugal) considered that the addition, proposed by the Siamese delegation, after the words "severely punishing", of the words "in accordance with the penal system of

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<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>2</sup> See page 42.



national legislation", was unnecessary. It was obvious that no country could be asked to impose a penalty which was not in conformity with its national law.

With regard to the other proposal of the Siamese delegation—a proposal which was identical with that presented by the Polish delegation—that the words "particularly by imprisonment or other form of deprivation of liberty" be deleted, M. da Matta believed that, if that phrase were omitted, the Conference would encounter the same difficulties as those which had already faced the Committee of Experts. The replies from the Governments showed that there were great differences of opinion as to what constituted a severe penalty. For instance, in Sweden, in certain cases, the punishment inflicted might merely amount to a fine. On the other hand, the Egyptian Government considered it preferable to do away with fines and to make imprisonment compulsory for all the offences mentioned in Article 1.

M. da Matta could not agree with the Polish delegation<sup>1</sup> that the expression "severely punishing" implied imprisonment. In Portugal, deportation, suspension of political rights and expulsion from the territory were major penalties, but they were not imprisonment.

He believed, therefore, that, if the phrase in question were omitted, doubts would arise at every moment as to what exactly was meant by the word "severely".

Colonel SHARMAN (Canada) said there seemed to be a fear that, if the Canadian proposal were accepted, persons guilty only of negligence, without any criminal intent, might be convicted. He could only repeat that, among the 4,600 narcotic criminal cases in Canada with which, in the past ten years, he had been associated, he had never encountered one in which the contingency his colleagues anticipated had in fact arisen.

The Canadian Government had ensured a complete control over all legitimate transactions. As a result of that control, there was no possibility of anyone, owing to negligence in respect of the law relating to the legitimate trade, incurring a charge under the law relating to illicit traffic. Obviously, therefore, any person in possession of drugs which had not come from licit sources—a fact which was easily demonstrable—must have obtained them from the illicit traffic. In those circumstances, to require the prosecuting authorities to prove that the act had been wilfully committed would be to handicap the work of the narcotic officers in an unfair and highly undesirable manner.

It was by means of the legislation to which he had referred that the Canadian authorities had been able largely to checkmate the illicit traffic. He would point out that the words "if wilfully committed" did not appear in the United States amendment. Indeed, he would like to ask Mr. Anslinger, an experienced narcotic officer, to give the Conference his own views on this question.

His colleagues would appreciate that it would be illogical for him to agree to the retention of a provision which was directly contrary to that which had been found essential in his own country. Some delegates regarded the abandonment of this particular provision as an essential step forward. He would ask those delegates who could not share that view at least not to press for the insertion of the provision, but to be content with reserving their rights in regard to it under the terms of Article 12.

M. TREBICKI (Poland) wished to make it clear that his delegation, in submitting its amendment, had not wished in any way to weaken the principle that the penalties imposed for illicit traffic in drugs should be severe.

He admitted the force of the arguments which the delegate of Portugal had presented, and he recognised that, when so many codes of law had to be covered, the meaning to be attached to the word "severely" might not in each country be the same. He would point out, however, that the word "particularly" in the present text implied only the possibility of punishing by imprisonment, and not the obligation to do so.

His delegation nevertheless considered that the question was purely one of drafting. It felt that a shorter text might be better.

Dr. Hoo Chi-Tsai (China) supported the two amendments proposed by the Portuguese delegation.

He was not in favour, however, of the proposal by the Canadian delegation to omit the words "if wilfully committed". In China, intent was a very important element in constituting an offence. Persons found carrying morphine or cocaine, for instance, provided that they had no knowledge of the real nature of the goods, were not, and should not be, severely punished. On the other hand, persons found intentionally transporting ingredients for the manufacture of those drugs were severely punished. He agreed with Colonel Sharman that drugs were seldom carried by unauthorised persons without the intention of committing an offence.

Dr. Hoo Chi-Tsai understood that the reason for the Canadian proposal was the fear that, if that phrase were retained, the onus of proof would fall on the State authorities. He thought, however, that that fear was not justified, since, as Mr. Dowson had pointed out, each country could, under its own law, establish whatever provisions it desired in regard to the onus of proof. A state could lay down the rule that an accused person be deemed guilty if he failed to establish proof of his innocence. Moreover, as M. Gorgé had said, the delegate of Canada could always

<sup>1</sup> See page 42.

make a reservation, in the usual form, in the Convention. Dr. Hoo Chi-Tsai thought that, if the words in question were omitted, the Conference might reach the position of forcing States to punish even cases in which no violation of the law had been intended.

He was glad to note that the Polish delegation did not wish to press its amendment that the words " particularly by a sentence of imprisonment " be omitted. It was true that this phrase did not provide a perfect criterion, but, nevertheless, a criterion of some kind was better than none at all. He admitted that the relative severity of a sentence of imprisonment, as compared to the imposition of a fine, depended upon the social and economic position of the offender. Personally, he would have preferred a more precise criterion, such as infliction of the same penalties as those inflicted for other offences which might be specified—for instance counterfeiting currency offences. He feared, however, that the adoption of a text of that kind might prove too difficult.

With regard to the addition proposed by the Siamese delegation, he agreed with the delegate of Portugal that this would be, according to the case, either useless or dangerous. One of the objects of the Convention was to compel Governments to impose severe penalties where they were not already provided. If the Convention were to be applied only under the provisions of existing law, certain Governments might claim that, in their own view, their law was sufficiently severe and that they were only required under the Convention to continue to apply the present system.

Mr. ANSLINGER (United States of America) could corroborate all that Colonel Sharman had said. The work of the narcotic authorities would be radically handicapped if, when prosecuting for illegal possession, for instance, or for illicit sale, they were obliged to prove wilful commission. Cases of negligence should be regarded as administrative matters. In all the cases with which he had had to deal, there had not been one case in a thousand in which the accused person had been found innocent.

For those countries in which such a qualification was necessary, Article 12, as the delegate of Switzerland had pointed out, constituted a saving clause.

Luang BHADRAVADI (Siam) hoped it was clear that the proposal of the Siamese delegation had been in no way intended to weaken the Convention or the general conception that the penalties imposed should be severe ones. As the Siamese first delegate had said, Siamese law provided for terms of imprisonment up to ten years.

The delegate of Portugal had said that, in his country, there were other penalties which were much more severe than imprisonment—so much so, that providing for the penalty of imprisonment might be regarded as superfluous. It seemed, therefore, that this particular criterion was inadequate, and that it would be better to leave it to each country to apply those penalties which it itself held to be severe.

With regard to the second amendment it had proposed, the Siamese delegation, in view of the observation made by the delegate of Portugal that it was admitted as a general rule that nothing could be done contrary to national law and of the opinion expressed by the delegate of China that the amendment was dangerous, was ready, in a spirit of conciliation, to withdraw the amendment in question.

With reference to the proposal of the Canadian delegation, the Siamese delegation would prefer that the words " if wilfully committed " should be retained, as in Siamese legislation intent was a constituent element in an offence.

The PRESIDENT wished to point out to the delegate of Canada that several delegations were very anxious to retain the phrase in question, lest offences which had been committed only by error or negligence should, under the Convention, be made liable to prosecution. Mr. Anslinger expressed the view that cases of negligence should be dealt with as administrative matters, and that, in his experience, it scarcely ever happened that a person accused of a narcotic offence was found innocent. The President did not see, therefore, what objection there could be to this phrase, especially as the matter of the onus of proof was purely one of national law.

M. GORRA (Egypt) associated himself with the proposal of the Portuguese delegation to substitute for the expression " other form " the words " other penalties ". He understood that the Portuguese delegation wished to reproduce, save for a few amendments, the proposal of the Committee of Experts. He agreed with the delegate of Portugal that it was necessary to take into account the fact that the penalties inflicted varied in different countries. He noted that, in the observations of the Austrian Government,<sup>1</sup> mention was made of administrative penalties. Egypt was more concerned than any other country with the question of penalties, and his Government would like to retain the criterion of deprivation of liberty.

Egyptian law provided for severe punishment for narcotic offences. Side by side, however, with the national courts were the consular courts, which were absolutely independent. As the penalties inflicted under other national laws might not be so severe, he would ask that provision be made that consular courts should impose identical penalties with those imposed by national courts. He thought the additional paragraph he had proposed in this connection might best be included at the end of this Article. The text read as follows :<sup>2</sup>

" The High Contracting Parties which possess an extra-territorial jurisdiction in the territory of another State party to the present Convention undertake, if the local courts cannot

<sup>1</sup> Document Conf. S.T.D.1, Annex 2.

<sup>2</sup> Document S.T.D. 15.



inflict penalties on their nationals in that territory in respect of breaches of the rules laid down in this Convention, to enact the necessary legislative provisions to enable their extra-territorial courts to apply the penalties provided in the local legislation."

M. SOUBBOTITCH (Yugoslavia) agreed with the delegate of Switzerland that the use of the word "necessary" was a question of drafting.

With regard to the proposal to omit the phrase "particularly by a sentence of imprisonment or other form of deprivation of liberty", he would have suggested, had it been possible for him to be present at the beginning of the discussion, a different procedure. It would have been better first to fix the offences, and in the next place the penalties which were to be inflicted for them. Similarly, in regard to the proposal to omit the phrase "if wilfully committed", it would have been better first to fix the categories of offences, and then to determine, on the one hand, those in which imposition of penalties would be justified, even if intent were not proved, and, on the other hand, those in which intent must be taken into account.

Personally, he was in favour of retaining the text in its present form. He also was of the opinion that the Convention must safeguard against the punishment of offences committed only by negligence. He would point out, however, that there appeared to be some inconsistency in employing the expression "the following acts if wilfully committed", and at the same time giving the specification contained in sub-paragraph (d) "any combination or agreement to commit any of the above-mentioned offences".

M. CASARES (Spain) thought it was clear that the retention of the phrase "if wilfully committed" would cause great difficulties for certain Governments. It would be easier to secure general acceptance for the text if that phrase were deleted.

M. CONTOUMAS (Greece) did not agree with those who feared that, if the words "if wilfully committed" were omitted, offences committed through negligence would have to be prosecuted and punished. Seeing that Article 12 of the draft Convention left the contracting parties free to "define" the offences referred to in Article 1, in accordance with the general rules of their domestic law, there were no grounds for such an apprehension. In availing itself of that right, a country could restrict the penalties to acts committed wilfully, to the exclusion of offences committed in error.

The PRESIDENT thought there was a misunderstanding on this matter.

It must be recognised that, if the phrase were omitted, States would, as a necessary consequence, be obliged to punish offences committed even through negligence or error. As the delegate of Yugoslavia had said, some offences, by their very nature, could only be committed with intent, while in the case of others a qualifying phrase such as this was essential. If there were no such qualification, it might happen, for instance, that a railway company transporting an illicit consignment of narcotics, as a result of negligence in ascertaining the contents of the consignment, would thereby be liable to prosecution and punishment under the terms of the Convention.

M. SOUBBOTITCH (Yugoslavia) could not altogether accept the interpretation of Article 12 given by the Greek delegate. In the Yugoslav delegate's view, under this article, it was for the different national legislatures to give their own definition of the elements constituting an offence.

The question of offences committed by negligence could not be passed over in silence, for it might give rise to practical difficulties in the application of the Convention. As the President had pointed out, the principle that only offences committed with criminal intent should be punishable was only to be established in regard to its international bearing. It was open to each country, under its own law, to widen the scope of incrimination.

Mr. DOWSON (United Kingdom) wished to make it clear that his Government attached some importance to this phrase. He believed it had been inserted on the advice of the Advisory Committee and that it had been in the text from the very beginning.

A vote by roll-call was taken on the *proposal of the Canadian delegation* to omit the words "wilfully committed".

*The delegations voted as follows :*

*For the amendment :* United States of America, Canada, Spain, Greece, Mexico.

*Against the amendment :* Austria, Brazil, United Kingdom, Bulgaria, Chile, China, Denmark, Egypt, France, Hungary, Iraq, Irish Free State, Japan, Liechtenstein, Netherlands, Poland, Portugal, Roumania, Siam, Switzerland, Czechoslovakia, Turkey, Yugoslavia.

*Absent :* Afghanistan, Cuba, Ecuador, Honduras, India, Nicaragua, Norway, Panama, Peru.

*The Canadian amendment was rejected, 5 delegations voting in favour, 23 against, with 9 delegations absent.*

Phya RAJAWANGSAN (Siam) withdrew the amendment proposed by his delegation.

Dr. CHODZKO (Poland) withdrew the proposal presented by the Polish delegation, as he noted that it had given rise to controversy.

M. DA MATTA (Portugal) would have preferred the word " necessary " to be deleted, but would withdraw that part of his delegation's proposal.

A vote was taken on the *second amendment proposed by the Portuguese delegation* to substitute for the expression " other form " the words " other penalties ".

Seventeen delegations voted in favour of the proposal.

*The proposal was adopted.*

*Paragraph 2 : Sub-paragraph (a).*

*(a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, brokage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs.*

The PRESIDENT said that two amendments to this sub-paragraph had been submitted.

*(a) Amendment proposed by the Spanish Delegation.<sup>1</sup>*

" To replace the text of the draft Convention by the following :

" ' (a) Manufacture, conversion, extraction, preparation and possession of, and illicit traffic in, narcotic drugs contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs.' "

*(b) Amendment proposed by the Swiss Delegation.<sup>2</sup>*

" To insert between the words ' sales ' and ' brokage ' the words ' delivery without consideration '."

M. LÓPEZ-REY (Spain) had, for the moment, nothing to add to the explanations of his delegation's amendment already given at the fourth meeting.<sup>3</sup>

M. GORGÉ (Switzerland) pointed out that the sub-paragraph under discussion gave a list of acts which were liable to severe penalties. The list was, from the standpoint of criminal law, clearly limitative or exhaustive; it was not an enunciative enumeration and must, therefore, be carefully studied to make sure that no loophole was left.

In comparing this enumeration with a similar list in Article 11 of the Swiss Federal Law on Narcotic Drugs of October 2nd, 1924, he had noted that the draft contained no reference to " delivery without consideration ", which was mentioned in the Swiss law. That was a gap, which should be filled. An offender prosecuted for the illicit sale of narcotic drugs might plead, in order to escape punishment, that he did not " sell " the drugs, but " gave them away ". It would be difficult to produce proof of the sale, and the accused must not be allowed to profit from that difficulty and obtain his acquittal. Those who " gave away " the drugs should also be punished.

The delegate of Spain had drawn attention to the dangers inherent in a limitative enumeration of punishable offences, pointing out that the present list comprised two kinds of offences—one including manufacture, conversion, extraction, preparation and possession, which were not directly equivalent to illicit traffic, while the remaining items in the list were directly associated with that traffic. M. López-Rey had, therefore, suggested that, instead of trying to enumerate all the offences of the latter kind, the words " illicit traffic " should be substituted as a generic term covering all acts connected with illicit trafficking. That would obviate the disadvantage of a possibly incomplete list.

There were, thus, two alternatives, either to give a complete limitative enumeration, as the Committee of Experts had done, leaving no gap—as far as possible—of the kind M. Gorgé had indicated, or, as in the Spanish proposal, to enumerate only the offences connected with manufacture, and summarise the remainder under " illicit traffic ". If the latter solution were preferred, he would suggest that the phrase " illicit traffic " be amplified by the addition of the words " in any form whatsoever ". It might also be advisable to employ an enunciative enumeration by adding in brackets a few terms illustrative of such illicit traffic—for example " offering for sale, distribution, purchase, sale, etc. ". M. Gorgé had no special preference, but recommended that, if the first solution were adopted, the list should be completed by a phrase covering delivery without consideration; if the second were accepted, he thought it would be advisable to amplify the Spanish delegate's text in the way he had mentioned.

<sup>1</sup> Document Conf. S.T.D. 14.

<sup>2</sup> Document Conf. S.T.D. 23.

<sup>3</sup> See page 33.

M. DA MATTA (Portugal), after drawing attention to the comments on the list of punishable acts in this sub-paragraph made by the Czechoslovak Government in its letter of May 24th, 1934,<sup>1</sup> added that the experts had presumably regarded this list as an exhaustive enumeration. He was, therefore, in favour of accepting the Swiss delegation's proposal to insert in the list the words "delivery without consideration", though, even then, the enumeration might still not be quite complete. His objection to the Spanish delegation's amendment to this sub-paragraph was that it introduced the expression "illicit traffic", which, as the Conference would have seen from the report of the Committee of Experts to the Council,<sup>2</sup> was a very difficult term to define. He therefore preferred to accept the draft text of this paragraph as amended by the Swiss delegation, but would suggest the addition after the words "exportation of narcotic drugs" of a phrase to the effect "and generally speaking, all punishable acts contrary to the provisions . . .". This would seem to make adequate provision for any offences not at present foreseen.

M. DE REFFYE (France), speaking as the former Chairman of the Committee of Experts, explained that the latter had given very careful consideration to the question of enumerating the acts punishable under paragraph 2 of Article 1; the Conference could rest assured that every word in sub-paragraph (a) had been carefully weighed before being finally adopted. The use of the words "illicit traffic" had, as the Portuguese delegate had just suggested, been deliberately avoided, because of the difficulties involved and particularly of the different interpretations attaching to that expression in French and English. Reference to the Minutes of the Committee of Experts' proceedings would show why the experts had considered it indispensable to have a list of offences.

Personally, he would have no objection to the amendment proposed by the Swiss delegation, though it was extremely difficult to find a single expression to embrace all the complicated operations which it was proposed to cover. In the Committee of Experts, it had been pointed out that the idea of "delivery without consideration" was inherent in the word "offering", which appeared in the experts' draft. Under French law, such an offence could not be punished, but the problem was more complicated in its international aspect, owing to the very small quantities which were usually involved and the improbability of being able to secure extradition for such offences.

Dr. VAN ANGEREN (Netherlands), while he believed that the Swiss delegation's proposal was worthy of careful consideration, suggested that it would be clearer if, instead of "delivery without consideration", the words "delivery contrary to the provisions . . ." were inserted, as this would cover delivery effected as a mere exchange. He did not agree that "offering" was equivalent to "delivery"; a drug, for instance, could be delivered without any offer being made.

Colonel SHARMAN (Canada) agreed with the Swiss delegate that it was necessary to include in the list of punishable offences a term to express the giving away of narcotic drugs. The inclusion of such a term had been found useful by the Canadian authorities, since it could often be shown that a drug had been given away when no sale could be proved. He wished, however, in the first place, to point out a discrepancy between the French and English texts of this sub-paragraph. The French text contained the word "*illicites*", for which there was no equivalent expression in the English text. Was the omission intentional, or should the word "illicit" be inserted in the English text?

M. CASARES (Spain) said that his delegation realised the difficulty of retaining the words "illicit traffic" in its amendment, in view of their ambiguity.

With regard to the proposal to insert the words "delivery without consideration", he would remind the Conference that narcotic drugs were not ordinary commodities. They might be given away in the first place, but, as addiction grew, it became more and more necessary for the addict to purchase the drug. As the substance of his delegation's amendment was really covered by the proposal of the Swiss delegation, he formally withdrew that amendment in favour of the Swiss amendment.

Dr. SCHULTZ (Austria) thought it would be dangerous to replace the list in sub-paragraph (a) by a general expression, and was in favour of adopting the Swiss delegation's amendment, or some similar solution. It was necessary to find a form of words which would make it possible to punish all acts coming within the category of illicit traffic.

Mr. DOWSON (United Kingdom), in reply to the question put by the Canadian delegate, said that the Committee of Experts had intended to omit the word "illicit" in both the French and English texts. The word must have been retained in the French text by mistake. It was really superfluous in view of the phrase "contrary to the provisions of the . . . Conventions . . ." which followed.

He did not attach very great importance to the addition of the words "delivery without consideration" proposed by the Swiss delegation, as he believed that such an offence was covered in the present text by the words "possession, offering . . . distribution". No special reference was therefore necessary.

<sup>1</sup> Document Conf. S.T.D. 1, Annex 2.

<sup>2</sup> Document Conf. S.T.D. 2, Annex 3.

M. GORGÉ (Switzerland) had just had his attention drawn to the fact that provision should also be made for delivery for a consideration. For instance, an individual might "give" in exchange for services rendered. His proposal could, therefore, be amended to read: "delivery with or without consideration".

M. DE REFFYE (France) confirmed the statement of the United Kingdom delegate that the experts had intended to omit the word "*illicites*" in the French text as being a pleonasm.

The PRESIDENT suggested that, subject to confirmation by the Minutes of the Committee of Experts of the explanations given on this point, the word "*illicites*" in the French text of sub-paragraph (a) should be deleted.

*The President's proposal was adopted.*

The PRESIDENT, reverting to the Swiss delegation's amendment, suggested that the idea of delivery, with or without consideration, might be better covered by the insertion after the word "*possession*" of the word "*délivrance*" in the French text, in preference to the word "*cession*", which, in the Napoleonic Code and codes derived therefrom, had a rather special significance.

Dr. HOO CHI-TSAI (China), not having been a member of the Committee of Experts, was unable to say why that Committee had decided in favour of a detailed list of offences.<sup>1</sup> The drawback of the present list was that some of the offences were not specifically covered by the international Conventions mentioned. His suggestion, therefore, would be to introduce after the words "exportation of narcotic drugs" the expression "if illicit or contrary to the provisions, etc."

M. GORGÉ (Switzerland) pointed out that the objection raised by the Chinese delegate would be met if M. da Matta's proposal were adopted—namely, to add the words "and, generally speaking, all punishable acts contrary to the provisions of the international Conventions concerned". In agreement also with the President's suggestion, he would accept the word "*délivrance*", although it did not seem very satisfactory from the legal standpoint. That being so, perhaps the phrase might read, "delivery on any terms whatsoever". There would then be no risk of any gap.

M. CONTOUMAS (Greece) recollected that there had been a lengthy discussion in the Committee of Experts of the point raised by the Chinese delegate. The draft for second consultation, which was then under consideration, took as the criterion of punishable offences the fact whether such offences constituted a violation of national laws promulgated to ensure the application of international Conventions. Had that criterion been adopted, the doubts expressed by Dr. Hoo would not have arisen, as all the various offences enumerated would be covered by national legislation. If, on the other hand, the international Conventions themselves were taken as the criterion, he agreed that the text would need to be carefully scrutinised. Such a scrutiny would show that "brokage" and "delivery" were not referred to or covered by any of the previous international Conventions. It would thus be impossible to use the expression "contrary to the provisions of the above-mentioned international Conventions".

M. LACHKEVITCH (Union of Soviet Socialist Republics) had gathered from the speeches of the Chinese and Greek delegates that, as at present drafted, sub-paragraph (a) enumerated certain offences which were not explicitly covered by the international Conventions previously concluded. It followed, therefore, that the drafting of this sub-paragraph was defective and would require amendment. His suggestion would be to substitute the expression "contrary to the aims and objects of the . . . Conventions".

The PRESIDENT asked the Conference to take a decision first on the question of the insertion between the words "sale" and "brokage" of the words "delivery on any terms whatsoever".

*The proposal was adopted.*

Mr. DOWSON (United Kingdom), reverting to the point made by the Greek delegate, considered it unnecessary for the Conventions themselves to contain specific references to the acts mentioned in sub-paragraph (a). In the Committee of Experts, he had taken the view that the transactions thus enumerated were transactions which could properly be said to come under one or other of the various transactions prohibited by the previous Conventions. If, for instance, "distribution" covered several of the acts mentioned under sub-paragraph (a), and if "selling" covered "brokage", it could reasonably be argued that brokage as a part of the operation of selling was covered by the previous Conventions. It was only inserted in the list because it was desired to identify the offence.

The PRESIDENT said that the Greek delegate had drawn attention to a defect in the wording of sub-paragraph (a), inasmuch as "brokage" was not specifically mentioned in the previous Opium Conventions. He suggested that this defect might be remedied by amending the concluding

<sup>1</sup> Document Conf. S.T.D. 1, Annex 2.

phrase of the sub-paragraph to read: "contrary to the laws and regulations promulgated in pursuance of the above-mentioned international Conventions dealing with narcotic drugs."

M. CONTOUMAS (Greece) said that the President's proposal coincided with the views which he had unsuccessfully advocated in the Committee of Experts.

M. SOUBBOTITCH (Yugoslavia) pointed out that, if the amendment proposed by the President were adopted, no national legislation promulgated in pursuance of the Conventions would cover "brokage", since none of those Conventions explicitly mentioned such an act.

Mr. DOWSON (United Kingdom) regretted that he was unable to accept the President's proposal. He suggested that the point should be referred to the Legal Committee for a report on the legal questions involved.

*The continuation of the discussion was adjourned to the next meeting.*

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## EIGHTH MEETING

*Held on Friday, June 12th, 1936, at 10.30 a.m.*

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*President: M. LIMBURG.*

### 15. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE I (continuation).

##### *Paragraph 2: Sub-paragraph (a) (continuation).*

The PRESIDENT recalled that, at the preceding meeting,<sup>2</sup> M. Gorgé had supported the suggestion made by the Portuguese delegate that, following the list of acts which were to be severely punished, there should be added the words "and generally speaking all punishable acts contrary to the provisions". On second thoughts, it seemed that this addition might be a dangerous one. The phrase suggested being rather vague, each Government might interpret it in its own manner. It would be better, therefore, not to insert it.

As M. Gorgé did not press for the insertion of those words, the President said that the suggestion of the delegate of Switzerland was withdrawn.

The President wished to make a few remarks concerning sub-paragraph (a), on which he would be glad to have the observations of the Chinese delegate.

On the previous day, the delegate of China had said that sub-paragraph (a), as worded, contained more than one gap. In particular, as the delegate of Greece had pointed out, one of the acts enumerated was brokage, which was not mentioned in the existing Conventions. In an attempt to give satisfaction to Dr. Hoo, the President had improvised a solution, which consisted in replacing the expression "contrary to the provisions of the above-mentioned international Conventions" by "contrary to the laws and regulations promulgated in pursuance of the above-mentioned international Conventions dealing with narcotic drugs". The Yugoslav delegate had rightly pointed out that that solution would not give satisfaction to Dr. Hoo, as it by no means filled the gap. It could, in fact, be claimed that, with a view to the application of the said Conventions, countries could enact laws and regulations which did not cover brokage.

In studying the question later that day, the President had realised—he had been unaware of this—that the wording he had suggested was the wording contained in the first draft Convention and that the Committee of Experts had subsequently abandoned that wording in favour of the present text.

In those circumstances, he must withdraw his suggestion and thought that, even if the paragraph contained a gap on this point, as Dr. Hoo had said, it would be better to leave the text as it stood. Furthermore, he was not sure that there was a gap. Given a little goodwill, brokage could be said to be covered by the text of Article 11 of the 1931 Convention which contained the word "trade". When the States set themselves to apply the new Convention in good faith, they would have to see that brokage also was severely punished.

He asked the Chinese delegate to consider his observations and to reply to them at the next meeting.

##### *Paragraph 2: Sub-paragraph (b).*

*(b) Cultivation, gathering and production in contravention of national law, with a view to obtaining narcotic drugs.*

The PRESIDENT opened the discussion on the principle of paragraph 2(b). One amendment, from the Indian delegation, had been received.

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<sup>1</sup> Document Conf S.T.D. 2, Annex 3.

<sup>2</sup> See pages 50 and 51.

*Amendment proposed by the Indian Delegation.*<sup>1</sup>

"To substitute for the words 'national law' the words 'the national law for the time being'."

Major COLES (United Kingdom) recalled that the Conference had before it the observations of his Government<sup>2</sup> on the proposal to introduce into the draft Convention a provision for the severe punishment of the act of cultivating and harvesting certain plants with a view to the production of narcotic drugs. The delegates would be aware, therefore, that the United Kingdom Government had serious objections to the inclusion of paragraph 2(b) in the Convention.

The United Kingdom Government fully recognised the importance of the control of the cultivation and harvesting of plants from which drugs could be produced, and it was anxious to see a plan for the exercise of such control worked out and put into execution. It took the view, however, that, until a practical system of control had been established, it was useless to say that the cultivating and harvesting of such plants should be made the subject of severe penalties.

The United Kingdom delegate thought the ultimate solution of the problem of illicit traffic was to be found in the control of the production of the raw materials from which narcotic drugs were made. The problem of such control, however, was a difficult and complex one, which would be neither solved nor rendered less difficult by retaining paragraph 2(b) in the Convention under discussion. A problem of this magnitude could not be dealt with adequately by the insertion of a brief paragraph in a Convention the avowed purpose of which was to secure the more uniformly severe punishment of traffickers.

It should, moreover, be pointed out that the question of the control of production had not been overlooked. The Advisory Committee, at its last session, had instructed the Secretariat to collect information concerning it, and the Committee was to devote a large part of its next session to considering the problem of the control of the production of raw materials.

For the reasons he had stated, the United Kingdom delegate asked that paragraph 2(b) should be omitted.

M. SEYMEN (Turkey) said the Turkish Government was not in favour of retaining paragraph 2(b), as the laws in force in Turkey had established a system of supervision which met all requirements. Thus, Law No. 2253, not only limited the area which could be placed under poppy cultivation, but contained a whole series of provisions for the strict control of such cultivation. Penalties were also provided, breach of the law in this matter being punished by sentences of as much as several months' imprisonment. Moreover, the Turkish Government had not confined itself merely to enacting laws limiting the cultivation of the opium poppy, but had also declared itself in favour of the summoning of an international conference to discuss the question of the limitation of the cultivation of the plant.

From the general standpoint, the proposal to summon a conference for the limitation of the production of the opium poppy, and the fact that the Advisory Opium Committee had already taken up this question, made the insertion of paragraph 2(b) superfluous. There was no reason to suppose that the proposed conference would not succeed in concluding a convention which would effectively limit that cultivation, nor could the decisions to be taken by that conference be prejudged. Further, if the present Conference were to retain paragraph 2(b), the Advisory Committee would have to be asked to drop its study of the question.

There was another objection to paragraph 2(b)—namely, that, under the terms of that paragraph, it seemed that all breaches of the national law in this respect must be punished by penalties of deprivation of liberty. If such were the meaning of the paragraph, it would entail a change in Turkish legislation. The Turkish Government, however, was not prepared, at present, to make any change in its national legislation, and reserved its right to make the necessary legislative amendments on the basis of the decisions which might afterwards be taken by the conference on limitation which it was proposed to summon.

M. MOMTCHILOFF (Bulgaria), on behalf of the Royal Government, concurred in the views just expressed by the United Kingdom and Turkish delegates. He felt obliged to take that opportunity to say that his Government still maintained the point of view communicated to the Secretariat of the League of Nations in its note verbale of May 27th, 1936, the text of which would be found in document Conf.S.T.D.3.<sup>2</sup> His Government would be glad to participate in the studies on the limitation of production and to furnish any necessary information and explanations.

M. TELLO (Mexico) was not opposed to the omission of paragraph 2(b), which, in its present form, he did not think satisfactory. He pointed out that Mexican law went further than the provisions of that paragraph, as it prohibited the cultivation of *cannabis*, the opium poppy and the coca leaf, for any purpose whatever.

M. DE REFFYE (France) associated himself with the proposal to omit paragraph 2(b).

He pointed out that, in its present form, that paragraph did not apply to all countries alike, in that those countries which had enacted a law dealing with the cultivation of plants from which narcotic drugs could be manufactured would be bound by it, whereas countries with no legislation of that kind would not be so bound.

<sup>1</sup> Document Conf. S.T.D. 20.

<sup>2</sup> Document Conf. S.T.D. 3, Annex 4.



Recalling the appeal that had been made to the delegations by Mr. Kendal at the sixth meeting,<sup>1</sup> to remove all the obstacles to achieving the aim of the Conference, the French delegate said that, in his opinion, paragraph 2(b) was more harmful than useful.

Further, the question to which this paragraph related was already being studied by the Advisory Committee. If the Conference dealt with it, the Committee would be faced by a *fait accompli*. Moreover, if the question of competence were raised, the decision would be in favour of the Advisory Committee. The present Conference had as its object the suppression of the illicit traffic in dangerous drugs—that was to say, the movement of those products as between the different countries. Cultivation, which was a purely national matter, could not be placed on the same footing as the traffic. As the Conference had met to consider the suppression of the illicit traffic in dangerous drugs in its international bearing, it could not deal with the cultivation of plants which might be used for other purposes than the manufacture of narcotics.

For those two reasons, and more particularly in view of the fact that it was not for the Conference to deal with this matter, since another organ had already taken up the question, the delegate of France asked that paragraph 2(b) should be omitted.

M. DELGORGÉ (Netherlands), referring to what he had said at the second meeting,<sup>2</sup> associated himself with the observations of the delegates of the United Kingdom and of France.

Dr. CHODZKO (Poland) recalled that the revised draft Convention was based on the existing Conventions and that the work of the Conference must remain within the framework of those Conventions. Advantage should be taken, therefore, of all the important parts of these Conventions. Since the Preamble of the present draft referred to the Convention signed at The Hague in 1922, that Convention should also be taken into account. It would be only logical, therefore, to draw the necessary conclusions from the provisions of the Hague Convention relating to raw opium.

Paragraph 2(b) was based on Recommendation V of the 1931 limitation Convention and on certain provisions of the Hague Convention (Articles 1 and 20) and of the 1925 Convention (Articles 2 and 28), which provided, respectively, for control of the production of raw opium, enactment of laws or regulations for the effective control of the production of raw opium and the infliction of penalties for breaches of the laws or regulations for the enforcement of the latter of those Conventions. There was, therefore, adequate legal basis for the text now under discussion. The question was whether the Conference should avail itself of the rights conferred upon it by those legal provisions to insert paragraph 2(b) in the Convention.

As regards the arguments that had been advanced against the paragraph, the delegate of Poland did not think that the fact that it was proposed to hold a conference on the limitation of the cultivation of the opium poppy justified the omission of the paragraph. It had been said that the result of that conference must be awaited. It should be pointed out, however, that it was not known what the decision of the limitation conference would be, nor even when it would assemble; it was possible that it might only meet two or three years hence. There was little hope, therefore, that the cultivation of the raw materials from which narcotic drugs could be made would be limited in the near future. Events, however, had anticipated the work of the Conference. In China, there was already a decree concerning violations of the prohibition to cultivate the opium poppy (see document O.C.1576(2)), which laid down, in particular, that any person cultivating that poppy with a view to extracting opium from it should be sentenced either to death, to life imprisonment or to a term of imprisonment of at least ten years. Further, in Siam, there was a law on the control of the cultivation of Indian hemp, which laid down, in particular, that no person might cultivate Indian hemp nor possess the seed of that plant, and that no person might either sell or purchase Indian hemp, any breach of that law being punished by a sentence of imprisonment of at least one year. Again, Turkey had limited the production of the opium poppy to 50 % of the previous total production, and had promulgated regulations limiting the area under poppy cultivation. It appeared that there were penalties for breaches of those regulations.

Three Governments concerned with production, therefore, had enacted regulations and provided for penalties without awaiting the decisions of the conference on limitation and production. If there were to be further delay, all the producing countries would do the same, and there might be no object in summoning a conference for the limitation of the cultivation of the opium poppy. It was for this reason that the Committee of Experts had considered it necessary to insert paragraph 2(b) in the text of the revised draft Convention.

With regard to the statement that had been made at the sixth meeting by the representative of the International Criminal Police Commission, the delegate of Poland was surprised that the Commission had asked the Conference not to adopt paragraph 2(b), without communicating the Minutes of the discussion it had held on that point.

As regards the text of paragraph 2(b), Dr. Chodzko pointed out that the addition of the words "in contravention of national law" adopted by the Committee of Experts represented a great concession on the part of the advocates of suppression. That concession had been made with a view to weakening the effect of paragraph 2(b), in order to facilitate the adoption of the clause. He agreed, however, that it would, perhaps, be going too far to inflict severe penalties on persons cultivating the plants. The provision contained in paragraph 2(b) might be given in a special article providing for less severe penalties in the case of cultivation, gathering and production with a view to obtaining narcotic drugs, than in the case of traffic in narcotic drugs.

<sup>1</sup> See pages 44 and 45.

<sup>2</sup> See pages 17 and 18.

Dr. Hoo Chi-Tsai (China) endorsed the Polish delegate's statement and said that his Government had instructed him to vote for the maintenance of paragraph 2(b).

Noting that the main argument submitted against paragraph 2(b) was that there might some day be a Convention for the limitation of the growing of plants that could be used in the manufacture of narcotic drugs, he pointed out that the object of such a conference for limitation would not be the same as that of paragraph 2(b). The convention which such a conference would prepare would limit *lawful* growing, whereas paragraph 2(b) provided for the punishment of *unlawful* growing. There were, therefore, two absolutely different questions. Consequently, the Conference's decision concerning paragraph 2(b) would not prejudge that of the conference for the limitation of cultivation.

M. HORRA (Japan) had nothing to add to the arguments submitted by the Polish delegate in favour of paragraph 2(b). He wished simply to say that, although the present text was already a great concession, the Japanese delegation was prepared to make a still greater concession, if possible, in order to ensure that paragraph 2(b) might be adopted, but it could not accept its omission.

He thanked the Indian delegation for the spirit of conciliation in which its amendment was drafted.<sup>1</sup> He hoped that other delegations would show a similar conciliatory spirit.

M. GORRA (Egypt) desired to make one observation concerning facts and another concerning law.

Egypt was in favour of maintaining this sub-paragraph, because she had conducted an experiment—and a very far-reaching experiment—along those lines. She had first authorised the growing of the opium poppy subject to certain restrictions and then, having noted that those regulations were inadequate and that evil must be attacked at the root, had completely prohibited the crop. It would seem that the experts' formula was quite adequate under present conditions, because it allowed the authorisation of growing within certain limits and provided, in the case of infractions, for punishment in conformity with national laws. The Polish and Japanese delegates had clearly showed that this formula satisfied everybody, and the Chinese delegate had said that it was not contrary to the plan for convening a new conference.

The French delegate had, on the contrary, spoken against the clause, in order, he had said, to facilitate agreement. The Egyptian delegate was always ready to help in reaching an agreement, but in the particular case he could not agree with the legal arguments of M. de Reffye, to the effect that the Conference was not empowered to consider this question because it was not a matter of international traffic. Nevertheless, in sub-paragraph (a), regulations had been laid down for the manufacture, transformation, extraction, preparation and being in possession of narcotic drugs—that was to say, operations which did not necessarily possess the characteristics of traffic.

One objection remained—namely, that many producing countries had asked for the omission of the clause in order to facilitate agreement. The Conference was therefore on the horns of a dilemma. Concessions would have to be made: as the President had said, in his opening speech, nobody could hope to obtain a hundred per cent fulfilment of his wishes. The question was whether those in favour of maintaining the clause should make a concession by accepting its omission or whether those who called for its omission should make the concession. He thought that the delegates had met in order to prepare legislation and must, as far as possible, agree on a text. The present text, as had been stated, seemed to give satisfaction, generally speaking. He hoped that the Conference would adhere, as far as possible, to the text presented by the Committee of Experts as a whole.

Dr. SCHULTZ (Austria), speaking as Austrian delegate, reminded the Conference that his Government, in its reply to the Secretary-General dated April 21st, 1936, had said that it had no observations to forward, but reserved its liberty to take up a position after it had heard expressed, at the Conference itself, the opinions of the countries most directly interested in the question. Unless he was mistaken, the representatives of those countries had pronounced against the clause under discussion, which would, they said, if it were adopted, cause trouble and make it difficult for them to accept the Convention. In those circumstances, the Austrian Government thought that the clause was inopportune, and the Austrian delegation made a reservation as to the attitude that it would adopt when the time came to vote on the point.

Speaking as an expert who had taken part in the preparatory work, Dr. Schultz said that, having studied the proposal and heard the observations that had been made, he recognised that it contained certain weak points, which had already been mentioned. Nevertheless, he had the impression that the clause was of value and connoted progress, in that it supplemented the system of combating the illicit traffic in a wide sense. He thought that the consequence of the adoption of the clause would be to strengthen the position of the States concerned—that was to say, the countries which grew and produced raw materials—by making it possible to prosecute persons who had contravened the national laws, even abroad. That was why he had been in favour of the clause. During the experts' discussions, reservations had certainly been made by the countries concerned. It might be hoped, however, that, after careful study, its opponents might reach another conclusion. If not, the changed situation would have an effect on his views.

Speaking as a member of the International Criminal Police Commission, Dr. Schultz reminded the Conference of the statement made at the sixth meeting by Mr. Kendal. That Commission had been invited to send a delegation to the Conference. At the end of May, it had held a session

<sup>1</sup> See page 53.

<sup>2</sup> Document Conf. S.T.D. 3. Annex 4.



at Belgrade and, as permanent Rapporteur, he had thought that the questions which might arise in the Conference should be examined in order that the necessary instructions might be given to the Commission's delegate. He had himself mentioned the most interesting points that might come up for discussion and effect the International Commission. Sub-paragraph (b) was the main point. In view of the position adopted by the Governments concerned, he had pointed out that, if it seemed that the clause was likely to raise serious difficulties, it would be the duty of the Commission's delegate to advise the Conference to omit it. That opinion had been shared by all the members of the International Commission, a fact which explained the gist of Mr. Kendal's remarks on the previous day. If his information were correct, the possibility of applying sub-paragraph 2(b) depended on the parties concerned. If the latter knew beforehand that the clause would cause them such difficulties as would seem to them to be insuperable, they could not be forced to submit. It was for those countries, in the first place, to say whether the clause was satisfactory or not, and the necessary conclusions should be drawn from their attitude.

M. LACHKEVITCH (Union of Soviet Socialist Republics) reminded the Conference that, in a letter dated April 16th, 1936,<sup>1</sup> the Government of the Soviet Union had pronounced in favour of the maintenance of sub-paragraph 2(b). He warmly supported the arguments of the Polish and Chinese delegates. M. Lachkevitch would only deal with one aspect of the question: against the maintenance of the sub-paragraph it had been objected that the question of the limitation of production would be studied shortly and that there was, therefore, no need to mention it in the present Convention. Nevertheless, this was a criminal law Convention, not a limitation Convention, and the fact that shortly—it was to be hoped—the growing of raw materials would be limited was one more reason why the Conference should immediately, in anticipation to a certain extent, include a penal clause in the present Convention. The necessity for taking up the question again later should be avoided, as its reconsideration would involve the convening of a new Conference, similar to the present one, in order to provide penalties for offences against the limitations that it might be decided to impose in the future. Consequently, even from that point of view, M. Lachkevitch thought it preferable to consider here and now the question of penalties in that connection. Moreover, sub-paragraph 2(b) referred to national laws. When those laws did not include such measures, it was difficult to see why the delegates of the countries in question should oppose the inclusion of the sub-paragraph in the Convention.

M. LACOUR (Brazil) confirmed Brazil's reply, dated April 7th, 1936,<sup>1</sup> to the Secretary-General's letter. The Brazilian Government fully supported the adoption of the new provision. As cannabis grew wild in abundance in Brazil and its use was spreading, the Brazilian Government intended to take repressive measures, and an enquiry had already been opened. In view of the present conditions in Brazil, the opinion of the Brazilian Government could be regarded as that of a producing country.

It would be wrong to maintain that the present Convention, which concerned illicit traffic, could not deal with cultivation, gathering and production. Cultivation was the very foundation of the traffic and of the evils against which the existing Conventions were directed. Consequently, it was reasonable, in the present Convention, to penalise an offence which was the real source of the mischief.

M. TREBICKI (Poland) desired to supplement the statement made by the first delegate of Poland on a point already dealt with by M. Gorra. The French delegate had said that the clause under discussion was not within the scope of the Conference, which was dealing with the suppression of illicit traffic. Sub-paragraph (a), however, dealt, among other points, with possession, which did not form part of the illicit traffic in the strict sense. It might be said that the acts enumerated in sub-paragraph (a) were preparatory to illicit traffic, but then cultivation, gathering and production contrary to the national legislation could be placed in the same category.

Secondly, M. Trebicki noted that the Mexican delegate had said that the production of raw material was prohibited in his country, and had been in favour of deleting the clause. The Mexican delegate could only be congratulated on such a satisfactory state of affairs, but that was not a sufficient reason for deleting the clause in a general convention.

M. SOUBBOTITCH (Yugoslavia) said that the legislation of his country covered all the points it was proposed to add to the Convention. The Yugoslav law on narcotic drugs dated from 1933, and the relevant provisions would be found in Articles 3, 4 and 24. Raw opium could only be produced for commercial purposes, and then only within a strictly defined zone. A declaration as regards production had to be handed in beforehand. There were very full regulations, and a penalty of fifteen days' imprisonment, in addition to the confiscation of the product, was imposed on persons who produced opium outside the zone or failed to make a declaration in advance. This also applied to the cultivation of coca and Indian hemp, which was prohibited. Consequently, his country would have no difficulty in accepting the clause. At the same time, to be quite frank, there was no need whatever for it to accept an international undertaking.

There was, however, a profound divergence of opinion between the countries represented at the Conference, and perhaps the words of one delegation would suffice to turn the balance one way or the other. M. Soubotitch understood that, for social or legislative reasons, some countries

<sup>1</sup> Document Conf. S.T.D. 3, Annex 4.

might feel the need of the support of an international Convention in imposing sentences of imprisonment for the offences in question. The problem was a somewhat serious one. As rather important countries, in which the production of raw materials played a considerable part, were divided into two camps, the question was worthy of closer study, and should not be settled by a majority or minority vote, the result of which was sometimes accidental, as it might depend upon the chance absence or presence of a delegation. As, on the other hand, most of the delegations contemplated a conference in the near future, and as it would have the necessary powers to discuss the question, M. Soubbotitch thought it would be as well to leave the matter to that conference.

The Soviet delegation had said that, if the clause were set aside for the present and left to a second conference, there would have to be a third to lay down the necessary penalties. Such procedure was not absolutely necessary, and the next conference could also settle the question of penalties for the acts concerned. The matter could either be notified to the Secretariat or the Council by means of a resolution, or the attention of the coming conference could be drawn to the importance of settling the question.

M. GORGÉ (Switzerland) had had no intention of speaking, but as the scope of the discussion had widened, he did not want his silence to be misinterpreted. Switzerland was not interested in the question directly or immediately, and that was why it had simply stated in its reply to the Secretary-General, dated March 5th, 1936,<sup>1</sup> that it saw no objection to the clause under discussion. The Swiss delegate was in a position to express an impartial opinion. Having heard the arguments of the supporters of the clause, particularly the first delegate of Poland, and of its opponents, he had been able to form an opinion and had made his choice fairly quickly. With the best will in the world, he had been unable to understand the justification for the arguments against maintaining the clause. He could not understand why a State which had freely enacted legislation on cultivation should refuse to undertake to punish severely the violation of its own legislation.

According to the Netherlands delegate, the clause was outside the scope of the existing Conventions. M. Gorgé would not revert to the decisive refutation of that argument already made by the Polish delegate. He regretted that the Conference had not begun by examining the Preamble, for it would have shown that the clause was quite within the scope of the existing texts.

The United Kingdom delegate had advanced a psychological argument. If, he had said, the clause were added to the Convention, it might give the illusion that the problem of controlling cultivation was settled. As the Polish delegate had pointed out, every effort had been made to take account of the different objections and, in reality, the clause was now so mild that there could be no illusion and no one could infer from it that the problem of the control of cultivation was settled.

In M. Gorgé's view, there was one argument, a practical and humanitarian argument, which dominated the whole question. Anything likely to facilitate the illicit traffic must be severely punished. That idea was quite within the spirit of the present draft. Anyone who knowingly and willingly violated a law on cultivation was helping to increase the stock of raw materials. An illicit increase in raw materials always had the same result—it stimulated and increased the illicit traffic. Members of the Advisory Committee were present at the Conference: they would remember why, in 1931, a Convention on manufacture had been drawn up—simply to reduce stocks to the strict minimum. If operations such as the illicit export and import of raw materials were punished, there was no reason why illicit production should not also be punished, in the same circumstances, in countries which had enacted legislation on the matter spontaneously, without any pressure having been brought to bear on them.

*The continuation of the discussion was adjourned to the next meeting.*

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## NINTH MEETING

*Held on Friday, June 12th, 1936, at 3.30 p.m.*

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*President: M. LIMBURG.*

### 16. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>2</sup> (continuation).

#### ARTICLE I (continuation).

#### Paragraph 2: Sub-Paragraph (b) (continuation).

#### *Draft Resolution presented by the Yugoslav Delegation.*

M. JIMENEZ (Chile) pointed out that, at the seventh meeting, the Conference had agreed, in principle, to punish severely any acts which might in any way be contrary to the provisions of Conventions in force, especially as regards the illicit traffic, of which the production of raw materials

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<sup>1</sup> Document Conf. S.T.D. 3, Annex 4.

<sup>2</sup> Document Conf. S.T.D. 2, Annex 3.

was the source. This was, moreover, the purpose of the Conference. In his opinion, there was no objection to maintaining sub-paragraph 2(b), because it was in accordance with the letter and spirit of former Conventions, especially when subordinated to the domestic laws of each country. If the sub-paragraph in question were open to criticism, it was on the ground that it did not go far enough. He therefore considered that it should be maintained.

M. DE REFFYE (France) recalled that the speakers who had been in favour of maintaining sub-paragraph 2(b) had pointed out that it had been adopted by the Committee of Experts in December 1935. The question had been much discussed at that time, and the Committee had decided by a vote of four to three to maintain it. The Conference would, therefore, observe that the Committee of Experts had been by no means unanimous on the subject.

Mr. HARDY (India) wished to explain the reason why he had proposed his amendment to paragraph 2(b).<sup>1</sup> The Japanese delegate had assumed that it had been put forward out of a desire for conciliation. Mr. Hardy could not claim that this was the case. The matter was of vital importance for his Government, since the sub-paragraph was open to two interpretations. Under the first, it would merely oblige Governments to impose severe penalties for breaches of their own laws regarding the cultivation, gathering, etc., of the poppy. The other interpretation was that the sub-paragraph would involve an obligation to increase existing legislation.

In India, the law provided for severe penalties and substantial control. If, therefore, the first interpretation were correct, the Government of India had no objection to the clause. If, on the other hand, the second interpretation were adopted, the Government of India would object, since the matter was one which fell within the province of the local governments. He had moved his amendment in order to make that point clear, but he was not a jurist and he was not certain whether he had succeeded. He would, therefore, suggest that the Conference should take a decision on the interpretation of the sub-paragraph, so that the interpretation might be recorded in the proceedings.

M. KOUKAL (Czechoslovakia) had been much impressed by the arguments advanced by the Polish and Swiss delegates. His Government desired that the suppression of the illicit traffic should be as effective as possible and should go to the root of the evil. As a jurist, however, he was compelled to point out certain disadvantages which the adoption of the clause would involve. On comparing sub-paragraph 2(a) and sub-paragraph 2(b), it would be found that they were essentially different from a legal point of view. Sub-paragraph (a) referred to the provisions of international Conventions, while sub-paragraph (b) referred to national law. If country A possessed legislation for punishing those who cultivated or gathered the poppy and country B had not a similar law, what attitude would country B adopt towards its nationals who had infringed the laws of country A?

It was desirable to make the Convention as effective as possible by drafting it so as to cover the largest possible number of punishable acts, but it was also necessary to obtain the greatest possible number of ratifications of the Convention. As Mr. Kendal, British Commissioner of Police, had said,<sup>2</sup> the Conference should act quickly, in order that the Convention might come into force as soon as possible, even at the cost of sacrificing certain provisions. If countries hesitated to accept sub-paragraph (b), it was preferable to obtain the greatest possible number of ratifications and bring the Convention into force immediately. If, therefore, sub-paragraph (b) formed an obstacle for certain States, it might be advisable to omit it, while recommending Governments to examine the question.

The PRESIDENT presented the following draft resolution<sup>3</sup> proposed by the delegation of Yugoslavia, and requested the delegates to include this resolution in their discussion.

"In view of the fact that a conference for the limitation of the production of raw materials is in preparation,

"The Conference decides to make no pronouncement on the question dealt with in sub-paragraph 2(b) of Article 1 (that is, on the question whether there should be laid down an international obligation to punish, as is provided in the first sub-paragraph of paragraph 2 of the said article, illicit cultivation, gathering or production).

"It is of opinion that this question will be more favourably discussed and settled by the aforesaid conference for the limitation of the production of raw materials.

"For this reason, the said sub-paragraph (b) will not be included in the text of the present Convention and will be reserved in view of the next conference."

Colonel SHARMAN (Canada) said that his Government, in its reply of March 10th, 1936,<sup>4</sup> to the questionnaire, had stated that this sub-paragraph raised questions of substance which were perhaps of greater importance to some other Governments, but that it saw no objection to the proposal itself, and would be ready to discuss it at the Conference if a sufficient number of States desired to consider it more closely. A considerable number of States had taken part in the discussion and he was, therefore, free to consider the proposal on its merits. There had been

<sup>1</sup> For the text of the amendment, see page 53.

<sup>2</sup> See pages 43 and 44.

<sup>3</sup> Document Conf. S.T.D. 25.

<sup>4</sup> Document Conf. S.T.D. 3, Annex 4.

sporadic efforts in Canada to grow the opium poppy; the offenders had been convicted under national law and little further trouble had been experienced.

Sub-paragraph 2(*b*), as he understood it, merely compelled States to punish the cultivation, gathering and production in contravention of national law. There was no reason why Governments should not enforce their own laws, which were presumably adapted to the conditions in their countries. Colonel Sharman would, therefore, vote in favour of the retention of the sub-paragraph and saw no reason for the delay suggested by the delegation of Yugoslavia.

M. TELLO (Mexico) wished to make his Government's view clear. As he had stated at the previous meeting,<sup>1</sup> Mexican legislation prohibited the cultivation and gathering of plants that could be used for the manufacture of drugs for whatever purpose.

If sub-paragraph 2(*b*) were adopted, there would be a discrepancy between the Convention, which permitted the cultivation of various plants for industrial purposes, and the Mexican legislation, which entirely prohibited such cultivation. Since, in accordance with Article 133 of the Constitution of the United States of Mexico, the Constitution, the constitutional laws and the international treaties and Conventions which had been ratified by Mexico were the supreme law of the country and prevailed over the ordinary laws, the Mexican Government, in ratifying the 1931 Convention had made, for obvious reasons, the following reservation :

"The Government of the United States of Mexico reserves the right to impose in its territory—as it has already done—measures more severe than those laid down by the Convention itself for the restriction of the cultivation or the preparation, use, possession, importation, exportation and consumption of the drugs to which the present Convention refers."

If sub-paragraph 2(*b*) were adopted, M. Tello would reserve the right of his Government—in so far and for as long as it might desire—to introduce into its legislation stricter measures in respect of the cultivation, gathering and production of the opium poppy, the coca leaf and cannabis.

M. DA MATTA (Portugal), while recognising the value of the various arguments put forward, still thought that those urged by M. de Vasconcellos, with so much precision and clearness,<sup>2</sup> retained their entire weight. In view, however, of the profound divergence of opinion regarding the maintenance of sub-paragraph 2(*b*), he wished to support the Yugoslav proposal to reserve this paragraph for the proposed conference on the limitation and production of raw materials.

M. GORRA (Egypt) had been struck by the fact—which M. de Reffye had recalled—that the Committee of Experts had voted this clause with a very small majority. At the previous meeting, he had said<sup>3</sup> that he had proposed to support the entire draft, which he had assumed was the result of laborious negotiations by the experts. But if the experts themselves had not been able to agree on the text, M. Gorra found himself in a somewhat embarrassing position.

M. DE REFFYE (France) explained that this question had not appeared in the preliminary draft and had, therefore, not been previously studied by the experts. It was, therefore, somewhat natural that they should have shown some hesitation on the point, which was, moreover, the only one in the draft Convention on which the experts had not reached almost complete unanimity.

M. LATOUR (Brazil) thought that the conciliatory spirit already shown in the Conference should not be exaggerated. He was afraid that the text might finally become a mere series of recommendations. Would it not be better to consider the text more directly and firmly to solve the difficulties? He thought the resolution proposed by the delegate of Yugoslavia would hardly lead to a favourable result.

M. SOUBBOTITCH (Yugoslavia) assured the Conference that his own country was not directly interested in the proposal he had made, which was submitted chiefly in order to reconcile the conflicting views of a small majority and a large minority. The resolution was concise in form and reasonable, in so far as it did not propose any solution but referred the question to the conference on raw materials. The latter would afford an opportunity for studying the whole problem of limitation of production, including the question of the penalties eventually to be imposed on illicit production. Yugoslavia had already introduced legislation to that effect but fully realised that other countries might not yet be prepared to enact similar regulations. If the draft resolution were rejected, he was prepared to vote for the deletion of sub-paragraph (*b*), as he believed that, however valuable *per se*, it could be more usefully discussed at the later Conference.

The PRESIDENT proposed that the Conference should vote first on the Yugoslav draft resolution, the adoption of which would mean the deletion of sub-paragraph (*b*). If, however, the Yugoslav proposal were defeated, the Conference would then have to vote first on the Indian delegation's amendment<sup>4</sup> and then on the sub-paragraph itself.

<sup>1</sup> See page 53.

<sup>2</sup> See pages 24 and 25.

<sup>3</sup> See page 55.

<sup>4</sup> See page 53.

Dr. CHODZKO (Poland) suggested that, as the Yugoslav proposal was submitted in the form of a draft resolution, the correct procedure would be to vote first on the sub-paragraph and then on the draft resolution.

The PRESIDENT said that, under the rules of Parliamentary procedure, the suggestion made by the Polish delegate was inadmissible. If it were decided to retain sub-paragraph (b), the draft resolution would be automatically eliminated. He regarded the Yugoslav delegation's proposal more as a motion on a point of order, the adoption of which would mean the deletion of sub-paragraph (b). The proper procedure, therefore, would be to vote first on that point of order before deciding as to sub-paragraph (b).

M. GORGÉ (Switzerland) felt that the procedure suggested was rather irregular. He wondered what was going to happen. If the Yugoslav suggestion were adopted, what significance would it have? Would it be inserted in the Final Act in the form of a recommendation or would it be a mere decision such as that which was taken in connection with each article, a decision which would be consigned only to the Minutes? That preliminary question must be settled.

The Swiss delegate remarked, further, that he would be much embarrassed if he had at once to take a decision regarding the text. He would be obliged to oppose it as long as he was unaware of the fate of sub-paragraph (b), for he was in favour of retaining that sub-paragraph. If, however, the Conference voted against its maintenance, he would be able, if necessary, to accept M. Soubotitch's suggestion. In order to clear up the position, it would be advisable, therefore, to vote first on the question of maintaining or rejecting the text prepared by the Committee of Experts.

Finally, while fully appreciating the good intentions of the Yugoslav delegate, M. Gorgé confessed that the text of the resolution did not seem to him to be sufficiently conciliatory. The text gave full satisfaction to those who wished to suppress sub-paragraph (b), but took into account hardly at all the arguments put forward by the Polish delegate and M. Gorgé himself.

He would not refer to the desirability of dealing in the near future with the problem of cultivation and to the necessity for finding a solution for it on the international plane. In conclusion, he proposed that the vote should be taken as he had suggested and, if necessary, that a definition should be given of the significance of the conciliation proposal put forward by the Yugoslav delegate.

M. DE REFFYE (France) confirmed that it was the general desire of those who opposed sub-paragraph (b) to find a solution which would be acceptable also to its supporters. He would have no objection to the proposal of the Yugoslav delegation being inserted in the Final Act and to the question being referred for consideration to the future conference on raw materials. The present wording could be amended to meet the objections raised by the Swiss delegate.

M. SOUBBOTITCH (Yugoslavia) agreed that the text of his proposal might perhaps be amended to bring out more clearly the desire of its authors to achieve a compromise acceptable to the other party also. That compromise consisted in the decision to defer consideration of the question until later; in other words, he was really proposing a kind of truce. If the idea were inadequately expressed in the present text, he would suggest that it be referred for suitable amendment to the Drafting Committee.

His own view was that the possible consequences of adopting sub-paragraph (b) as at present worded had not been sufficiently weighed. The Convention should aim at setting up, not a national, but an international standard and, from that point of view, he felt that the present text was not really adequate. Yugoslavia, he repeated, would find no difficulty in signing a Convention containing such a clause, but it was extremely desirable to secure the adhesion of other countries which were opposed to its insertion.

The PRESIDENT reiterated his view that the draft resolution was really tantamount to a motion on the point of order, which, if accepted by the Conference, would automatically mean the deletion of sub-paragraph 2(b) and the insertion in the Final Act of a recommendation based on the Yugoslav delegation's draft resolution.

He had now received an amended text, according to which the second paragraph would read :

"The Conference, considering that the question dealt . . . has not been sufficiently studied by Governments, while stressing the great importance which it attaches to a solution of this question, recommends that the sub-paragraph in question should be reserved and not included in the text of the present Convention and that the matter should be referred to and settled by the conference for the limitation of the production of raw materials."

M. GORRA (Egypt) said that, in the light of the explanations given, it would now be clear to the Conference that it was voting on a compromise resolution. As the text submitted seemed, however, to be in the nature of a subsidiary conclusion, would it not be more correct to vote first on the text of sub-paragraph (b) and then decide whether to adopt the Yugoslav delegation's draft resolution? If a vote having been taken first on the draft text of sub-paragraph (b), it was rejected, the Conference could then consider a compromise solution based on the Yugoslav proposal and adopt it as a recommendation.

M. CONTOUMAS (Greece) agreed with the President that it was preferable to take a vote first on the Yugoslav delegation's proposal and he agreed also with M. Soubotitch as to the substance of that proposal, but he disagreed with both as to the purpose of the vote proposed. Presumably, M. Soubotitch had intended to submit a compromise proposal which would extricate the Conference from the present difficulty. As it was proposed to hold a conference on raw materials and as sub-paragraph (b) was unacceptable to certain Governments, the best solution would be to take no decision now but refer the matter to that conference.

In those circumstances, he would suggest that the present Conference be asked to vote only on the principle underlying the Yugoslav delegation's proposal; if the vote went in favour of that principle, the actual wording of the proposal might be left to the Drafting Committee.

M. SOUBBOTITCH (Yugoslavia) accepted the proposal of the Greek delegate.

M. GORGÉ (Switzerland) repeated that he would find it difficult to take a decision on the principle at issue until he knew whether sub-paragraph (b) would or would not be retained in the draft Convention. If it were deleted, he might then consider accepting a proposal of a conciliatory nature.

As the Yugoslav delegation's proposal, however, was virtually an amendment to delete sub-paragraph (b), he suggested that the correct procedure for the Conference would be to vote on that amendment first.

Dr. CHODZKO (Poland) supported the suggestion of the Swiss delegate.

M. SOUBBOTITCH (Yugoslavia) declared his readiness to withdraw his proposal, if it were felt to be in any way hampering.

M. CASARES (Spain) endorsed the suggestion put forward by the Swiss delegate.

M. CONTOUMAS (Greece) pointed out that, in taking a decision on the compromise proposal submitted by the Yugoslav delegation, the Conference must realise that it would be taking a decision on the whole of that proposal, including the deletion, on certain conditions, of sub-paragraph (b). The proposal was really two-fold, as it involved a decision first to delete sub-paragraph (b) and then to recommend that the matter be referred for consideration to the conference which would have to study raw materials. If the principle of that recommendation were adopted, the Drafting Committee would then be asked to prepare a text for insertion in the Final Act of the Conference. He repeated, however, that the deletion of sub-paragraph (b) would be only conditional.

M. HORTA (Japan), while in favour of the procedure proposed by the Swiss delegate, thought he should also point out a danger inherent in its adoption. The present assembly was a Diplomatic Conference, the purpose of which was to draft the text of an international Convention. The clauses of that Convention must be adopted unanimously, not by a majority vote. If, as M. Gorgé suggested, a vote were taken on sub-paragraph (b) and only a majority of the Conference voted for its retention, such vote could not be regarded as final. He would, therefore, suggest that if a vote were taken, the President should ask those delegations which voted against the sub-paragraph whether they were prepared eventually to accept the text adopted by the majority. If they refused, the Conference should then be asked to consider some form of conciliatory solution.

M. GORRA (Egypt) agreed with M. Contoumas that the Yugoslav delegation's proposal fell into two distinct parts, a recommendation to delete sub-paragraph (b) and a recommendation to refer the question to the Conference on raw materials. The procedure should therefore be to take a vote first on sub-paragraph (b) and then to ask the Drafting Committee to prepare a compromise recommendation.

M. LACHKEVITCH (Union of Soviet Socialist Republics) agreed with the Japanese delegate that delegations were met in a Diplomatic Conference. That Conference, however, was being held under the auspices of the League of Nations. Instead, therefore, of improvising procedure, he suggested that the Conference should follow the Assembly's Rules of Procedure. Article 18, paragraph 6, of the latter read as follows:

"If an amendment striking out part of a proposal is moved, the Assembly shall first vote on whether the words in question shall stand as part of the proposal. If the decision is in the negative, the amendment shall then be put to the vote."

The course to be adopted was therefore quite clear.

M. MANOILOVITCH (Yugoslavia) intimated that, in order to enable the Conference to settle the question of principle, the Yugoslav delegation would withdraw its proposal for the time being. If the Conference decided to delete sub-paragraph (b), the proposal could always be re-submitted.



The PRESIDENT announced that, the Yugoslav draft resolution having been withdrawn, the Conference would now discuss the Indian delegation's amendment<sup>1</sup> to sub-paragraph (b). He had been asked in this connection by the delegate of India whether the words "national law" in this sub-paragraph meant national law as at present existing, or if it included any fresh legislation subsequently introduced. His own personal view was that the words in question meant, not only existing, but all future national legislation.

Mr. HARDY (India) explained that he had intended to enquire whether sub-paragraph (b) as at present worded would oblige the Government of India to alter its legislation, except in so far as concerned the introduction of severer penalties.

The PRESIDENT gave it as his personal opinion that the text of sub-paragraph (b) did not oblige States to modify their national legislation. If, however, such national legislation contained provisions regarding the cultivation, gathering and production of raw materials, it was essential that the penalties attaching to breaches of such provisions should be in harmony with the terms of paragraph 2 of Article 1.

Dr. SCHULTZ (Austria) expressed the view that acceptance of the draft Convention would oblige signatory States to modify national legislation in respect of Articles 3 and 4. For instance, if an Austrian committed abroad one of the acts referred to in sub-paragraph (b) and returned to Austria "without having been punished therefor", the Austrian authorities would be obliged to prosecute and punish the offender in the same manner as if the offence had been committed in Austrian territory.

The PRESIDENT reminded the Austrian delegate that his remarks hardly applied to the question raised by the delegate of India. He repeated, in amplification of his previous reply, that, if national legislation contained no regulations prohibiting cultivation, gathering or production, that legislation could be left untouched. If cultivation, etc., were partially or conditionally prohibited, the legislation would also remain unaffected, except in so far as it was necessary to increase the penalties in virtue of the first phrase of paragraph 2 of Article 1.

M. CASARES (Spain) saw no point in discussing the possible consequences of a clause which had not yet been adopted. He would therefore move that the Assembly Rules of Procedure should be applied and that a vote should immediately be taken on the proposal to delete sub-paragraph (b).

Mr. HARDY (India), though personally satisfied with the clear explanation contained in the President's reply to his question, had instructions from his Government to obtain an official ruling on the point raised. In such cases, Governments might either rely on the wording of the clause itself as amended and finally inserted in the Convention, or on the official proceedings of the Conference stating that a particular paragraph had a particular meaning. He must therefore ask the President to obtain the Conference's approval of his ruling, in which case Mr. Hardy would withdraw his amendment.

The PRESIDENT asked the Conference whether it agreed with his interpretation of sub-paragraph (b), to the effect that the clause imposed no obligation on any country to change its national legislation except where such legislation prohibited in any way or to any degree cultivation, gathering or production, in which case the penalties for a breach of such prohibition should be in harmony with the provisions of Article 1, paragraph 2.

*The President's interpretation was approved.*

Mr. HARDY (India) *withdrew* the amendment submitted by the Indian delegation.

The PRESIDENT asked the Conference to vote on the maintenance or deletion of sub-paragraph (b) in Article 1, paragraph 2.

*A vote was taken by roll-call.*

*The result of the voting was as follows :*

Fifteen countries voted for the maintenance of sub-paragraph (b) : Brazil, Canada, Chile, China, Egypt, Spain, United States of America, Greece, Irish Free State, Japan, Poland, Switzerland, Union of Soviet Socialist Republics, Uruguay, Venezuela.

Eleven countries voted for the deletion of sub-paragraph (b) : Afghanistan, Austria, United Kingdom, Bulgaria, France, Netherlands, Portugal, Roumania, Czechoslovakia, Turkey, Yugoslavia.

Six countries abstained from voting : Denmark, Hungary, India, Mexico, Norway, Siam.

*The Conference therefore decided, by 15 votes to 11 with 6 abstentions, to retain sub-paragraph (b).*

<sup>1</sup> See page 53.

*Paragraph 2 : Sub-Paragraph (a) (continuation).*

The PRESIDENT asked whether the delegate of China agreed with the substance of the proposal submitted as an amendment of paragraph 2(a) and to its being referred to the Drafting Committee.

Dr. HOO CHI-Tsai (China) explained that he had submitted amendments to meet the objections raised to his proposal and agreed to the matter being referred to the Drafting Committee, which was free to reject those amendments if it so wished. Those amendments were as follows :<sup>1</sup>

“ 1. To insert the words ‘ which may be considered as ’ between the words ‘ drugs ’ and ‘ contrary ’ .

“ 2. To add at the end of the paragraph : ‘ that is when these acts are committed by such persons or under such conditions as are not expressly authorised by the laws and regulations promulgated to give effect to the aforesaid Conventions in the country where these acts are committed ’ . ”

M. DA MATTA (Portugal) pointed out that, comprehensive though the list of punishable acts in this sub-paragraph was, he had certain doubts as to whether it was entirely exhaustive. He suggested, for instance, that another form of activity which was quite as dangerous as manufacture, conversion, extraction, etc., was the “ use ” of dangerous substances. He made no specific proposal but, as several delegations had suggested bringing this clause into harmony with the provisions of previous Conventions, he would point out that Article 5 of the 1925 Convention included a reference to the “ use ” of narcotic drugs. He suggested that this point should be borne in mind in the final drafting of this particular clause.

The PRESIDENT said that the remarks of the Portuguese delegate tended to reopen a discussion which had already been closed, but proposed that the Conference should examine the suggestion made by the Portuguese delegation at the next meeting.

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TENTH MEETING

*. Held on Saturday, June 13th, 1936, at 9.30 a.m.*

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*President : M. LIMBURG.*

**17. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>2</sup> (continuation).**

*ARTICLE I (continuation).*

*Paragraph 2 : Sub-Paragraph (a) (continuation).*

The PRESIDENT recalled that at the close of the preceding meeting the delegate of Portugal had asked why the word “ use ” in the 1925 Convention did not appear in paragraph 2(a) in the list of acts which were to be severely punished.

The word “ use ” appeared only in Article 5—that was to say, in Chapter III of the 1925 Convention, and consequently only related to manufactured drugs. It did not apply, therefore, either to raw opium or to Indian hemp. If the word “ use ” were inserted in paragraph 2(a), this expression would apply to all the Conventions, and not only to the Convention in which use was already included. Moreover, the notion of use was already expressed by the word “ possession ”, which appeared in the list in paragraph 2(a).

He proposed that the Conference adopt paragraph 2(a), reserving the question of the omission referred to at a previous meeting, in connection with which an amendment had been submitted to the Drafting Committee.

Subject to the above-mentioned reservation, paragraph 2(a) was adopted in the following form :

“ (a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any condition, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs.”

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<sup>1</sup> Document Conf. S.T.D.26.

<sup>2</sup> Document Conf. S.T.D.2. Annex 3.



*Paragraph 2 : Sub-Paragraphs (c) and (d).*

The PRESIDENT thought sub-paragraphs (c) and (d) should be discussed together, as certain of the amendments received referred to both. These sub-paragraphs read as follows :

(c) *The inciting or aiding and abetting of the commission of the offences specified above;*

(d) *Any combination or agreement to commit any of the above-mentioned offences.*

The five following amendments had been received :

*Amendment proposed by the Canadian Delegation.<sup>1</sup>*

"To add at the end of sub-paragraph (c) the words 'or any conspiracy in relation to such offences'."

*Amendment proposed by the Spanish Delegation.<sup>2</sup>*

"To amend sub-paragraph (c) to read as follows :

" '(c) Inciting or persuading to commit the offences specified above, and complicity in their commission.' "

*Amendment proposed by the French Delegation.<sup>3</sup>*

"To substitute for the word 'inciting' the word 'inducing' in sub-paragraph (c)."

*Amendment proposed by the Japanese Delegation.<sup>4</sup>*

"To amend sub-paragraphs (c) and (d) to read as follows :

" '(c) The inciting or aiding and abetting of the effective commission of the offences specified above;

" '(d) Any combination or agreement to commit any of the offences mentioned under (a) and (b)'."

*Amendment proposed by the Portuguese Delegation.<sup>5</sup>*

"To amend sub-paragraphs (c) and (d) to read as follows :

" '(c) Intentional participation in the offences specified in this article;

" '(d) Combinations or agreements to carry out the offences specified in this article'."

The reasons for the Canadian amendment had been stated at the fourth meeting.<sup>6</sup> The President now called upon the other delegations which had submitted amendments to give any supplementary explanations they thought desirable.

M. DA MATTA (Portugal) proposed to refer to the other amendments in conjunction with that which he had submitted on behalf of the Portuguese delegation.

In the first place, he drew the Drafting Committee's attention to the word "commission" employed in sub-paragraphs (c) and (d) in the phrase "the commission of the offences specified above". The word "commission" did not seem to him the proper one in this connection.

The Japanese delegation, he observed, proposed to retain the word and to add the qualifying word "effective" in sub-paragraph (c). The addition seemed unnecessary, since the commission of an act could only be effective. The Japanese delegation probably had in mind criminal intent followed by consummation of the offence.

The Spanish amendment proposed to replace the words "aiding and abetting of the commission of . . ." in sub-paragraph (c) by the words "persuading to commit", and to introduce the conception of complicity in addition to that of incitement. That seemed to imply the existence of a distinction between incitement and complicity: but incitement could itself also constitute a case of complicity.

The Portuguese amendment to sub-paragraph (c) proposed to substitute for the list of offences therein enumerated the phrase "intentional participation". That was an expression which had a wider meaning than "inciting or aiding and abetting". As the aim of the Convention was to ensure that no criminal should escape punishment, the widest possible formula should be adopted to cover all offences. With the same object, the Portuguese delegation further proposed to substitute the word "*faits*" for the word "*actes*" in the French text of sub-paragraphs (c) and (d) on the ground that "*faits*" had a wider significance than "*actes*".

The Canadian amendments would have the effect of amalgamating sub-paragraphs (c) and (d). M. da Matta was not, in principle, opposed to that suggestion; but, logically, it did not seem

<sup>1</sup> Document Conf. S.T.D. 10.

<sup>2</sup> Document Conf. S.T.D. 14.

<sup>3</sup> Document Conf. S.T.D. 18.

<sup>4</sup> Document Conf. S.T.D. 13.

<sup>5</sup> Document Conf. S.T.D. 17.

<sup>6</sup> See pages 32 and 33.

necessary. The two paragraphs referred to quite different criminal offences, which were, moreover, the subject of separate treatment in the codes of the different countries; he was, therefore, in favour of keeping the two sub-paragraphs separate.

M. CASARES (Spain) recalled that the reasons for his amendment had been stated at the fourth meeting.<sup>1</sup> He accepted the Portuguese delegate's observations with regard to the Spanish amendment and, to preclude any suggestion of a distinction between incitement and complicity, he proposed to insert before the words "complicity in their commission" the phrase "any form of", so that sub-paragraph (c) would read as follows:

"(c) Inciting or persuading to commit the offences specified above, and any form of complicity in their commission."<sup>1</sup>

The Portuguese proposal to substitute "*faits*" for "*actes*" in the French text would entail similar substitutions in other provisions of the Convention—in particular, Article 2. Certain of the "*actes*" to which Article 1, sub-paragraph 2(a), related were not, strictly speaking, "*faits*"; and he was in favour, therefore, of retaining the word "*actes*".

The PRESIDENT proposed to postpone, until the end of the discussion on Article 1, the question whether to retain the word "*actes*" or replace it by "*faits*", as the question arose in several places in the Convention.

*The President's proposal was adopted.*

M. BOURGOIS (France) explained that the reason for the French delegation's proposal to substitute the word "inducing" for the word "inciting" in sub-paragraph 2(c) was that, in the French Penal Code, there was a clear distinction between incitement and inducement.

Incitement was a moral and psychological act, a form of suggestion, whereas inducement, to be punishable, must be direct, and must take place in one of a number of strictly defined forms—namely, by gifts, promises, threats, abuses of authority or of power, criminal plottings or artifices. "Inducing" was, therefore, clearly the better term in sub-paragraph (c).

It was true that "inciting", and not "inducing", was the term used in the draft Convention for the Prevention and Suppression of Terrorism. The draft Convention under examination by the Conference was, however, of quite a different character from the draft Convention for the Suppression of Terrorism, as in the case of terrorism the moral act was extremely important. It was for that reason that the word "inciting" had been used in the latter case.

M. HORII (Japan), in reply to the Portuguese delegate's contention that one of the Japanese amendments was not altogether clear, explained that the Japanese delegation, in asking that sub-paragraph 2(c) should be drafted as follows: "The inciting or aiding and abetting of the effective commission of the offences specified above", desired to make clear that inciting and aiding and abetting were only punishable when the principal punishable act was effectively consummated. That proposal was based on a principle embodied in the Japanese Criminal Code, whereby inciting and aiding and abetting were only punishable when the principal punishable act was effectively completed. It was moreover possible to interpret the revised text of the draft Convention in the same sense; and, if the Conference were prepared to approve such an interpretation, the Japanese delegation would withdraw its amendment.

The Japanese delegation supported the Portuguese delegation's amendments, except that it did not think it necessary to substitute the expression "offences specified in this article" for the words "above-mentioned offences" in the revised draft Convention.

Dr. VAN ANGEREN (Netherlands), speaking of the Canadian amendment, said he gathered that the conception of "conspiracy" was one of considerable importance for the suppression of the illicit traffic in narcotics in Canada. The Committee of Experts, it seemed, had had the conception of "conspiracy" in mind when it used the words "any combination or agreement" in sub-paragraph (d). The Canadian delegation, it appeared, was not satisfied with sub-paragraph (d), which, moreover, was not acceptable to the Netherlands delegation. The expression "conspiracy", which the Canadian delegation wished to insert, signified an understanding between a number of persons with a view to the perpetration of a criminal offence. Consequently, the text before the Conference provided for the punishment of those persons before execution had been begun and even before the preparatory act had been achieved. But Netherlands law did not penalise criminal association which was not followed by consummation of the act, except in the case of plots against the public safety. Although the narcotics problem was an extremely grave one, it could not be treated as on the same footing as a crime directed against public safety. The Netherlands delegation could not, therefore, accept the Canadian amendment.

With regard to the Portuguese delegation's amendments, Dr. van Angeren accepted the proposal to substitute the words "intentional participation" for "the inciting or aiding and abetting" in sub-paragraph 2(c), an amendment to which he wished particularly to draw the attention of the Conference. On the other hand, he was unable to accept the Portuguese amendment to sub-paragraph (d). As sub-paragraph (b) was to stand, sub-paragraphs (c), (d)

<sup>1</sup> See page 33.

and (e) must cover the acts to which sub-paragraph (b) related, with the result that combination or agreement to commit the acts to which sub-paragraph (b) related, which were not penalised under the national law of the countries concerned, would become penal under the Convention. To remedy this, he proposed that the provisions of sub-paragraph (b) should be inserted at the end of the article after the provisions of sub-paragraphs (c), (d) and (e).

M. CONTOUMAS (Greece) observed that the expression "intentional participation" (as an alternative to "The inciting or aiding and abetting of the commission of . . .") in the Portuguese amendment to sub-paragraph (c) was represented as covering both incitement and aiding and abetting on the ground that both incitement and aiding and abetting implied participation. He pointed out that, while it was true, logically speaking, that intentional participation covered both incitement and aiding and abetting, intentional participation also had a definite and restricted meaning in the penal law of a number of countries which was less general than the meaning attached to the expression by the Portuguese delegation. In the Greek Penal Code, for example, intentional participation connoted the participation of the co-principal of the crime, which was quite different from incitement and aiding and abetting. A similar distinction between those terms was to be found in the draft Convention for the Suppression of Terrorism, which, although not yet adopted, carried indisputable authority, since it formed part of Professor Pella's work for the suppression of international crime, and had been drafted by eminent jurists. In Article 3, sub-paragraph 2 of paragraph 1, after enumerating a number of offences ("any conspiracy and any direct incitement, whether successful or not, to commit any of the acts set out in Article 2, any wilful complicity . . ."), the draft Convention on Terrorism added "and any help given towards the commission of such an act". To remove all possible doubt, M. Contoumas proposed to follow the precedent of the draft Convention for the Suppression of Terrorism by the insertion of the words "intentional participation", seeing that intentional participation was an altogether distinct conception. The effect would be to make paragraph (c) read as follows :

"(c) Intentional participation in, and the inciting or aiding and abetting of the commission of the offences specified above."

The French text of the Canadian amendment was not clear, the meaning of "conspiracy" not being exactly reproduced by the words "*association ou entente*". That point, which was one of form, should be brought to the notice of the Drafting Committee.

The PRESIDENT pointed out that the words "the inciting or aiding and abetting of the commission of the offences specified above" in sub-paragraph 2(c) covered inciting and aiding or abetting which was not followed by effective action.

On the other hand, it was extremely doubtful whether the words "intentional participation" could cover inciting and aiding or abetting which was not followed by consummation of the offence.

M. KOUKAL (Czechoslovakia) pointed out the disadvantages attaching to the use, in an international convention, of a phraseology conforming too closely to that of the legislation of particular countries. The French, Japanese, Canadian and Spanish amendments went too far in their regard for the special phraseology of national jurisprudence. For the purposes of an international convention, conceptions of more general character should be followed which were more readily adaptable to the legislation of all countries. He accepted, therefore, the Portuguese delegation's expression "intentional participation", which was wider and more elastic in character, covering both incitement and aiding and abetting to commit offences.

M. Koukal thought the Canadian amendment too narrow, and could not accept it.

With regard to the Japanese amendment, M. Koukal observed that the revised draft Convention as it stood covered even the case of incitement not followed by consummation of the offence, inasmuch as sub-paragraph (e) referred to "attempts"—which implied that incitement not followed by consummation of the offence was penal.

M. DA MATTA (Portugal), speaking with reference to the French amendment to substitute the word "inducing" for the word "inciting" in sub-paragraph 2(c), agreed with the Czechoslovak delegate as to the necessity of remaining outside the conceptions embodied in the criminal law of the different countries. M. Bourgois had adduced the French code in support of his amendment : but "inducement" had not the same meaning in all penal systems as in the French code. If the French amendment were adopted, there might be some confusion in the application of the Convention in the different countries.

On the other hand, the expression "intentional participation" covered every possible form of aid or participation—in other words, all acts calculated to incite the criminal to commit his crime. It was the most general and the most commonly used expression.

Mr. DOWSON (United Kingdom) deprecated discussions on comparative law. Obviously, it was not possible to find a form of words adaptable to all the different systems of penal law, and he agreed with M. Koukal that it would be unwise to attempt to adjust the terms of the Convention to fit all the different national systems of law. With one exception, the amendments under discussion were all drafting amendments. There was no reason, therefore, for discussing them further in full conference. Subject to the decision of the President, they should be referred to the Committee of Jurists, as none of them raised any question of principle and there was, accordingly, no need to take a vote on them.

The only point that called for a discussion of principle was that raised by the Netherlands delegate with regard to his Government's inability to accept the phrase "*toute association ou entente*" or the word "conspiracy" proposed by the Canadian delegation.

The United Kingdom delegation, for its part, had not proposed any amendments. It was of the opinion that the various amendments already put forward should be considered in connection with Article 5—that was to say, in connection with the question of extradition. The problem raised by the Netherlands delegation was a somewhat delicate one; and it would be difficult for the United Kingdom to agree to the omission of the words "any combination or agreement". When the drafting of that paragraph had been under consideration by the Committee of Experts, Mr. Dowson had held that the insertion of the words "combination or agreement" was not necessary; but, as some of his colleagues took the opposite view, he did not press the point and had not, in fact, opposed the inclusion of those words in the Convention. Under the English law, the word "conspiracy" had a technical meaning; but that meaning was tantamount, for practical purposes, to "combination or agreement", with the result that "conspiracy" might be regarded for the purposes of Article 5 as an extraditable offence. He saw, in short, no necessity for inserting the word "conspiracy", inasmuch as it was equivalent, for *practical* purposes, to "combination or agreement". "Conspiracy" merely meant an agreement between two or more persons to commit an illegal act.

On the other hand, Mr. Dowson had no objection to the words "intentional participation" as proposed by several delegations. The expression represented a compromise between the different legal systems; and, although it had no special meaning in English law, it might well be retained—the more so as it appeared in Article 3 of the Convention on Counterfeiting Currency.

Colonel SHARMAN (Canada) noted that the Portuguese delegate understood the Canadian amendment as being intended to amalgamate sub-paragraphs (c) and (d). It was not, however, a mere change of form that the Canadian delegation desired. It was of little consequence to the Canadian delegation whether there were one or two paragraphs in this particular passage of the Convention, provided the word "conspiracy" was inserted. It was the insertion of this word to which the Canadian delegation attached importance. The expression meant a great deal in Canada, not only for the purposes of the police authorities entrusted with the suppression of narcotic crimes, but also for the purposes of the legal experts on whom the Canadian Government relied in connection with narcotics prosecutions.

Ten years' experience had also shown the importance of this conception in narcotic cases of an international character. The absence of any extradition procedure based on the conception of "conspiracy" was one of the greatest obstacles in the work of suppression. He was alive to the difficulties inherent in the existence of divergent systems of national law, and did not propose to discuss the technical aspects of the subject. He wished, however, to address a very urgent appeal to the jurists assembled at the Conference to give consideration to the difficulties by which the police of the different countries were confronted as a result of this gap in the extradition agreements.

In document O.C.S.274, there would be found an account of an affair involving a case of "conspiracy". This account gave a good idea of the kind of difficulties that were encountered. The need for overcoming those difficulties was the only reason for the Canadian amendment; and, if the Committee of Jurists found a suitable solution, the Canadian delegation would be ready to welcome it.

The traffickers with whom the police had to deal were crafty individuals, who stopped at nothing, and had large sums of money at their disposal. In one of these affairs, the total capital involved had amounted to 5 million dollars, and, to take a single item, a sum of 183 thousand dollars, representing narcotic purchases made, had been sent from Montreal to another country. Traffickers of this kind were able to enlist the help of leading barristers for their defence, and, in order to bring out the serious nature of the incidents which were always liable to occur, it would be recalled that, in a certain affair, one witness had been assassinated in the United States, another at Montreal, and the accused had committed suicide.

In order to emphasise the necessity of embodying the conception of "conspiracy" in the Convention, Colonel Sharman proposed to put in concise form the case, which was by no means a theoretical one, of a combination of six criminals engaging in an international narcotic traffic transaction, without it being possible to hold that there had been any "inciting" on the part of any person whatever. The centres of operation were at Montreal and New York. The first of the traffickers, who might be called A, was in a country on the other side of the Atlantic, where he had connections enabling him to purchase and forward large quantities of drugs. The second, B, who was in another country, had large sums of money which he was able to employ in the affair, and he knew that the affair would bring in big profits. The third, C, was in yet another country. His part would be to try to get into personal touch with the Customs officials, and to offer them bribes, in order that these officials might facilitate the introduction of the narcotics into the country under false trade descriptions. The fourth trafficker, D, was also in the country to which the narcotics were to be sent. His task would be to receive delivery of the goods and find suitable hiding-places for them. The fifth, E, would, from time to time, take from those hiding-places the amounts required, in order to pass large quantities of the narcotics into the illicit traffic, either in Canada or the United States. As regards the sixth, F, he would proceed from Canada to the transatlantic country in which A was, in order to ensure that all was going according to plan, and to make personal arrangements with A.

It must be stressed that the case thus presented in concise form was by no means a hypothetical one. The Canadian authorities had got wind of something being on foot, but they had not a knowledge of the affair in all its details. The officials specially concerned had, however, a great responsibility, for they knew that the quantity of narcotics involved was large, representing

as it did a retail value of 5 million dollars. Supposing the authorities succeeded in seizing the narcotics and in laying hands on all the individuals who had participated in this "conspiracy", how could the individuals in question be charged in respect of the offences included under the Convention? A had done no more than find channels for forwarding the drugs; B had not manufactured any drugs but had only engaged capital in the affair; C had only committed the offence of corruption of officials, and had never seen the narcotics; D could be prosecuted for having received delivery of the narcotics and having concealed them; E could be prosecuted for having been found in possession of the drugs. As for F, he escaped any charge. It was quite clear, however, that in the case given it was not only the acts of D and E which should be included under the terms of the Convention, but those of the whole gang. If it were possible to make the members of the gang subject to extradition proceedings, on account of "conspiracy", they might be sentenced to terms of imprisonment long enough to prevent them from doing any further harm for a great many years.

The system recommended by the Canadian delegation would do much more to prevent illicit importation of narcotics on a large scale than the system of Customs seizures alone, which, as the delegates knew, only represented 10% of the quantities involved in the illicit traffic. Under the circumstances, he wished to make a pressing appeal to the jurists present at the Conference to consider an appropriate form of words which would make it possible to prosecute and convict individuals for committing an act which, under Canadian law, was an act of "conspiracy".

M. CONTOUMAS (Greece), supporting Mr. Dowson's observations, suggested that the best course would be to refer the various amendments to the Committee of Jurists.

M. TREBICKI (Poland) seconded the Portuguese delegate's proposal, for the reasons invoked by that delegate and by others. From the point of view of the Polish Penal Code, the text of sub-paragraphs (c) and (d) was quite acceptable, and the offences enumerated in the present text of the draft Convention were satisfactorily described. Nevertheless, the formula proposed by the Portuguese delegate seemed better calculated to allay misgivings, and would thus facilitate the application of the Convention and avoid possible divergencies between the juridical concepts embodied in the various criminal codes. If the Portuguese amendment were not accepted, the Polish delegate would accept the present text.

M. GORGÉ (Switzerland) could not agree with the Greek delegate that the present discussion turned solely on points of drafting. The Greek delegate had himself raised certain questions of substance and principle. M. Gorgé entirely agreed with the Portuguese delegate's excellent presentation of the question. Without wishing to criticise the authors of the draft Convention, he felt that the present wording of sub-paragraph (c) was not a very happy one, and he was grateful to M. da Matta for having so clearly pointed out the defects of its wording.

On the other hand, the Czechoslovak delegate, like his colleagues from Portugal and the United Kingdom, had shown quite clearly that no text could be discovered which would satisfy the terminology of all national laws. Sometimes ideas had to be sacrificed, at other times words. Reference had been made to Penelope's task: it might have been made to the rock of Sisyphus.

In Article 3 of the Convention on Counterfeiting Currency, "intentional participation" was mentioned. Consequently, the text proposed by the Portuguese delegation had already been adopted by another conference and been incorporated in another Convention of the League of Nations. He did not see why the same wording should not be adopted in the present case.

Mr. ANSLINGER (United States of America) said that, generally speaking, lawyers tended to draft legislative texts on the basis of the experience acquired by police-officers. It was logical that in such cases the views of those who were, so to speak, in the firing-line should be taken into account. With all respect to the lawyers present, he must say that he had been surprised to read in the Minutes of the Committee of Experts that the experts thought it was a very difficult matter to prove "conspiracy". Such a finding was contrary to the experience of most officials responsible for combating the drug traffic.

What difficulties could there be in including the concept of "conspiracy", even if to do so would be of use to two countries only? Those two countries were certainly very anxious that it should be done. It was they who were asking for the amendment, and it was they who would have to prove "conspiracy", for it was the recognition of this charge that would make it easier for them to combat the drug traffic by prosecuting traffickers. If the authorities of those countries arrested a man who was a member of a gang, they wanted to be able to prosecute and arrest the other members of the gang; and this they could only do if there was a charge of "conspiracy". The traffickers in question were those who caused the greatest havoc in countries like the United States, Canada, Egypt and China. Furthermore, the concept seemed so simple to the interested countries: "conspiracy" was an agreement between two or more persons to achieve an unlawful purpose or achieve a lawful purpose by unlawful means.

Mr. Anslinger would further point out that the Extradition Treaty between the United States of America and France did not even include the limitation provided for in paragraph 4 of Article 5. He felt that the French Government deserved praise for having agreed to include among extraditable persons persons charged with "conspiracy". At that very moment, the American authorities had under arrest in New York a man accused of "conspiracy" who had two accomplices in

France. As a result of the Agreement between the two countries, the requisition for extradition would be submitted to France on the strength of the charge of "conspiracy". He again appealed most earnestly to the lawyers present to accept the Canadian amendment, so that their names might be inscribed on the roll of honour of those who had done all they could to help stamp out the evil of illicit drug traffic.

Luang BHADRAVADI (Siam) said the Siamese delegation experienced no difficulty in accepting the text of sub-paragraph (c) as at present worded, in view of the fact that Siamese law and the Siamese Penal Code made provision for these offences. He read the relevant passages of the Siamese Penal Code, which made such acts punishable with imprisonment. If certain drafting changes were thought to be desirable, the Siamese delegation would not raise any objection. He wished, however, to point out to the Portuguese delegate that the Siamese Penal Code drew a distinction between "incitement" and "participation", and it would be rather difficult to punish "participation".

He would have some hesitation in accepting the Japanese amendment, because Siamese law made it possible to punish "incitement", even if the act had not been actually committed. In that connection he quoted the relevant passages of Siamese law, providing punishment both for the commission of an offence and for intent to commit the offence. Siamese law, therefore, provided punishment, even if the act had not been consummated. In short, he would prefer the present text of the draft Convention.

M. BOURGOIS (France) approved the insertion of the words "intentional participation", but proposed that the Committee of Jurists should consider the desirability of also adding the words "in any way". This addition would meet the case of those who feared that the courts might interpret the expression in too strictly legal and narrow a sense.

M. GORRA (Egypt) noted, from the Portuguese delegate's excellent speech, that the words "intentional participation", which it was proposed to insert, were more rigorous than the present text, because they included both "incitement" and "aiding and abetting". The French delegate had proposed that the word "incitement" should be replaced by "inducement", which was more restrictive. As M. Bourgois had said that he could support the Portuguese amendment, M. Gorra concluded that the French delegation no longer insisted on its amendment and agreed that the expression "intentional participation" should include both "incitement" and "aiding and abetting".

With regard to the text of the Portuguese amendment, he wondered whether the word "intentional" was not superfluous. Paragraph 2 referred to "the following acts, if *wilfully* committed". After a long discussion, this wording had been maintained. In those circumstances, the text proposed by the Portuguese delegation would be a repetition that might weaken the provision.

M. CASARES (Spain) agreed that the amendments should be referred to the Committee of Jurists and, in order to simplify the discussion, was prepared to abide by its decision concerning the scope of the Spanish amendment.

Certain delegations attached exceptional importance to the inclusion of the concept "conspiracy". The main obstacle was not one of substance: it lay, rather, in the difficulty of finding a suitable French translation for the word. He thought, however, that it must be possible to find a French expression which was the exact equivalent of the English word, and strongly urged that this satisfaction should be given to the countries which desired the addition.

There was, however, one question of principle which must be settled beyond all doubt before the discussion ended. The Japanese delegation had proposed adding to the word "commission" the word "effective". He wondered whether that addition really expressed the intentions of the Japanese delegation, because "commission" was always "effective", and the Portuguese delegate had clearly shown that the addition was superfluous.

M. Casares thought that the Japanese amendment had a wider aim in view—namely, to ascertain whether the offence should be deemed an offence without considering whether it had produced any practical result, or whether the act would only be punishable when it had produced definite results. The Siamese delegate had pointed out that the Siamese Penal Code provided for punishment, even if the act were not consummated, whereas, in the view of the Japanese delegation, the act should be punishable only if it had produced punishable results. That was a question of substance, on which delegations might hold different opinions. The discussion could not be closed until this point had been elucidated, to enable delegations to refer, where necessary, to their Governments for instructions.

M. DA MATTA (Portugal) thanked the Polish delegate for his partial acceptance of the Portuguese amendment, and the Swiss delegate for his observations.

The Greek delegate had asked what would be the result of "incitement" to offences not consummated. The answer was easy. A person "inciting" to the commission of an offence was a party to the offence. His position depended on the acts he had committed. He would be punishable, if his acts constituted an initiation of the consummation of an offence and if his attempts were punishable under the Convention. If his acts were merely preparatory, they were punishable under the national law. If he had not committed any acts which could be regarded as punishable, he could not be punished. The point for decision, therefore, was the nature of the acts committed by the party "inciting" and their bearing on the criminal offence.



"Incitement" to offences not consummated would or would not be punishable, according to the nature of the acts committed by the party "inciting".

Certain delegations had expressed doubts as to the meaning of "conspiracy". He thought himself the concept was covered by the formula proposed by the Portuguese delegation. "Conspiracy" might, however, have some special meaning in English law. It was a point for consideration; the necessary explanations might be embodied either in the report or in a clause of the Final Act.

M. HORTA (Japan) said that, for the moment, he withdrew the amendment proposed by his delegation. He had heard the explanations given by the Portuguese delegate. In the light of that interpretation, an opinion could be formed on the text to be submitted by the Committee of Jurists, and the Japanese delegation would then be in a position to say whether it could accept the text or not.

The PRESIDENT said that the Conference had to take a decision concerning the various amendments, it being understood that the Japanese amendment was withdrawn for the moment. Certain delegations had suggested that the amendments should be referred to the Committee of Jurists. Other delegations, in particular the Swiss delegation, wished certain questions of principle to be settled before they were referred to the Committee of Jurists. In that connection, the amendment most clearly involving a question of principle (which had been very favourably received by the Conference) was the Portuguese amendment. He proposed, therefore, that the Conference should first vote on that amendment. If it were adopted, all the amendments, including the Portuguese amendment, would be referred to the Committee of Jurists.

Before putting the matter to the vote, the President reminded the Conference that the Convention on Counterfeiting Currency mentioned "attempts and acts of intentional participation": but, as the Greek delegate had pointed out, the draft Convention on Terrorism, though it was still only a draft, included both concepts—namely, direct incitement to an offence, whether consummated or not, and intentional participation.

M. DELGORGE (Netherlands) asked whether it was proposed that the Conference should vote separately on the two Portuguese amendments.

The PRESIDENT replied in the affirmative. He proposed first to put to the vote an amendment to sub-paragraph (c)—that was to say, the insertion of the words "intentional participation". If that amendment were adopted, he thought the Portuguese amendment to sub-paragraph (d) should be maintained, perhaps with a slight modification: but, at any rate, sub-paragraph (d) could not be left as at present worded.

M. BORBERG (Denmark) reminded the Conference that the Egyptian delegate had drawn attention to the words "*intentionelle*" and "*faits*". Was it to be understood that, if the Portuguese amendment were adopted, those words would be referred to the Committee of Jurists?

The PRESIDENT replied in the affirmative.

Mr. HARDY (India) asked whether the Japanese delegation also withdrew its amendment to sub-paragraph (d).

M. HORTA (Japan) replied that he had only withdrawn the amendment to sub-paragraph (c).

M. GORRA (Egypt) asked for an explanation concerning the vote about to be taken. If the Portuguese proposal were adopted, sub-paragraph (c) would be replaced by the words "intentional participation in the offences specified in this article". M. Gorra understood that this proposal, even if adopted, would be referred to the Committee of Jurists. He asked whether the Committee of Jurists would merely maintain or modify this formula or whether mention would be made (as he desired it should be) in the Minutes, as had been done in connection with another point, that that formula was more comprehensive than that in sub-paragraph (c), which it was intended to replace.

The PRESIDENT assumed that the Portuguese amendment, if adopted, would be referred to the Committee of Jurists, together with all the other amendments. It was, of course, obvious that, by reason of the adoption of the amendment in question, the Committee of Jurists would have to take account, as far as possible, of the wording approved by the Conference.

M. CONTOUMAS (Greece), like the Egyptian delegate, felt somewhat uneasy. The Portuguese proposal, which appeared to meet with the approval of the Conference, was designed to replace the text of the draft by the words "intentional participation", which, according to the author of the amendment, covered both incitement and aiding and abetting. The Greek delegate had said that, in his opinion, that term did not necessarily cover the two expressions. Nevertheless, the majority of the delegations appeared to take a different view and to agree with the interpretation given by the Portuguese delegate. M. Contoumas could also agree, if he could feel certain that the term covered both concepts. How could he obtain that assurance? The text of the Convention would have to be interpreted by the Jurists and the courts of the contracting parties. He was prepared to vote in favour of the Portuguese amendment, if it really covered incitement and aiding and abetting, but it might be easier for him to do so, if an authentic interpretation of the real aim of the Portuguese amendment, on the lines indicated by M. da Matta, were given in the Final Act.

M. SOUBBOTITCH (Yugoslavia) thought that care should be taken not to convey an impression that was contrary to the views of several delegations, including the Yugoslav delegation. The Greek delegate had drawn attention to the difficulties which the insertion of the words "intentional participation" might raise in the courts when they were called upon to apply the Convention. He had always understood that the actual Convention was not intended to be a law directly applicable by the courts, but represented an undertaking binding States to enact certain legislative provision. That, moreover, was quite clear from the wording of the introductory sub-paragraph of paragraph 2, which stated that "each of the High Contracting Parties agrees to make the necessary legislative provisions". A State would be free to reproduce, in its legislation, the actual words of the Convention, but was not obliged to do so. The guiding principles laid down in the Convention were intended not so much for national courts as for national legislatures.

Colonel SHARMAN (Canada) asked whether the Conference intended to refer the Canadian amendment to the Committee of Jurists, signifying its agreement, in principle, with that amendment. If not, he would ask for the Canadian amendment to be put to the vote.

The PRESIDENT explained that the Conference should first of all vote on the Portuguese amendment. The authors of that amendment intended the term "intentional participation" to include incitement. As he had already pointed out, the terms used in the Convention for the Suppression of Counterfeiting Currency ("attempts to commit and any intentional participation in") appeared to him to cover incitement. Further reference to the point would be found in the Minutes. It was clearly understood that those who now voted in favour of the Portuguese amendment meant it to cover "incitement", in accordance with the interpretation given by the authors of the amendment themselves.

The Yugoslav delegate's observation was quite correct. The draft Convention would have no effect of itself: it would be for the contracting parties, once the Convention had been adopted, to promulgate the necessary legislative provisions. There were certain countries, such as the Netherlands, in which the Convention could come into force immediately; but that did not apply to the majority.

In order to meet the wishes of the Canadian delegate, he would invite the Conference first to vote on the Portuguese amendment and then on the question whether the idea of "conspiracy" should, or should not, be inserted in the Convention.

*Twenty-eight delegations voted in favour of the Portuguese amendment.*

The PRESIDENT said that, in view of the result of the vote, there was no need to complete the vote on that issue. As already stated, all the amendments, including the Portuguese amendment, would be referred to the Committee of Jurists.

The President then invited the Conference, as requested by the Canadian delegate, to decide whether, in referring all the amendments, including the Canadian amendment, to the Committee of Jurists, the Conference did, or did not, recommend the insertion of the idea of "conspiracy".

Colonel SHARMAN (Canada) wished the vote to be taken by roll-call.

M. TELLO (Mexico) understood that the Canadian delegate was asking for a vote on the principle, not on the actual word. In the former case, he could give an affirmative vote, but not in the latter case, because in the Mexican code the word "conspiracy" (*conspiración*) referred solely to offences against the Republic.

M. DA MATTA (Portugal) said he, too, would have to vote against the insertion of the word "conspiracy"; but if, on the other hand, the vote was to be taken on the point that the conception of "conspiracy" was covered by the Convention, and if an explanation to that effect were included in the report of the Conference or in the Final Act, he could accept it.

M. BOURGOIS (France) said that he could vote in favour of the insertion of the word "conspiracy", but not "conspiration", which was not a correct translation. The proper rendering of "conspiracy" was "*entente criminelle*".

M. CONTOUMAS (Greece) observed that the Conference was about to be asked to take a vote in English and a vote in French. Personally, he would have no difficulty in voting on the English word; but he would prefer to vote on the French term—namely, on the basis of the text of the amendment as it appeared in the French document distributed by the Secretariat. In that document, the French text of the Canadian amendment used the words "*association ou entente*".

The PRESIDENT said it was next to impossible to vote on the French word and on the English word. He was sorry he had not taken part earlier in the discussion, because, if he had spoken on the Canadian amendment, he would have said that, in his opinion, the word "*entente*" covered everything that the Canadian delegate had in mind and corresponded to the word "conspiracy". It was, however, impossible to translate that word into French by "conspiration"; and the author of the Canadian amendment had realised this, since the French text of his amendment read "*entente*" and not "conspiration". That being the case, he ventured to suggest to Colonel



Sharman that he should not press for a vote at the moment. The Canadian amendment would be re-examined by the Committee of Jurists, which would see whether the word "*entente*" or some other word should be used and whether in English the word "conspiracy" could be left.

Colonel SHARMAN (Canada), replying to the Mexican delegate, said that he certainly did not wish to ask the French-speaking delegations to vote on the word "*conspiration*". What he wanted was a vote on the question whether the equivalent idea to "conspiracy" should be inserted in the French text.

M. TREBICKI (Poland) supported the President's suggestion. He went even further. Now that the Conference had voted in favour of the Portuguese amendment, he proposed that the question should be left as it stood for the moment, and that a vote on the Canadian amendment, in order to give full satisfaction to the Canadian delegate, should not be taken until the next meeting.

The PRESIDENT declared the discussion closed. In view of the impossibility of finding any other solution, he proposed that no vote should be taken on the Canadian amendment, but that it should be referred, purely and simply, to the Committee of Jurists.

Colonel SHARMAN (Canada) asked the Conference first to vote on the question of principle, as that was the object of his amendment.

The PRESIDENT pointed out that the question of principle was no longer involved: it was merely necessary to ascertain whether the concept "conspiracy" could be correctly rendered in the French text. That point would be settled by the Committee of Jurists.

Dr. HOO CHI-Tsai (China) gathered that all the delegations approved of the idea underlying the Canadian proposal.

M. DELGORGE (Netherlands) said that was by no means the case.

Dr. HOO CHI-Tsai (China) replied that, in any case, the majority of the Conference was in favour of it.

The PRESIDENT put to the vote his proposal to refer the Canadian amendment purely and simply to the Committee of Jurists.

*The President's proposal was adopted by 19 votes to 6.*

The PRESIDENT said that all the amendments, including the Canadian amendment, would be referred to the Committee of Jurists.

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## ELEVENTH MEETING

*Held on Monday, June 15th, 1936, at 10.30 a.m.*

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*President: M. LIMBURG.*

### 18. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE I (continuation).

##### *Paragraph 2: Sub-Paragraphs (c) and (d) (continuation).*

The PRESIDENT recalled that, at the last meeting, the Portuguese amendment to sub-paragraph 2(c), "intentional participation in the offences specified in this article", had been accepted. That, like all the other amendments, would be submitted to the Committee of Jurists for drafting purposes.

Mr. FULLER (United States of America) was not clear as to what had been decided regarding sub-paragraphs (c) and (d). He thought it had been agreed to insert the word "conspiracy" in the English text and to leave it to the jurists to find a French equivalent.

The PRESIDENT replied that no vote had been taken on the use of the word "conspiracy", as the majority of the delegates had considered that it was not a question on which they could vote. The word "*entente*" would no doubt remain in the French text and it was for the English speaking delegates to decide whether the correct translation of that word was "conspiracy".

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<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

Colonel SHARMAN (Canada) referred to the decision not to delete the words "wilfully committed" from the introductory sub-paragraph of paragraph 2 of Article 1.

Before a vote was taken, the President had ruled that the exclusion of those words would mean that persons acting in good faith would be punished for accidental illegal acts. That view was not in agreement with that of the Canadian legal adviser. The Conference had, however, voted immediately after the President had made this ruling and might well have desired, as Colonel Sharman did, that innocent people should not be punished.

In the circumstances, therefore, he wished to give notice that he would raise the question at the second reading and would ask that the opinion of the Legal Section of the Secretariat be obtained on the point and circulated to members of the Conference before such second reading.

Dr. VAN ANGEREN (Netherlands) wished to repeat his statement at the previous meeting that his country could not accept sub-paragraph (d) in its present form. The words "any combination or agreement" implied that the national law would have to make punishable a kind of conspiracy or agreement to commit an offence in respect of drugs—that was to say, an agreement reached in advance without there being any attempt to commit the offence.

His delegation desired to do everything possible to co-operate, but it could not bind itself to obligations which could not be fulfilled in practice. It would no doubt be stated that the Netherlands would have to alter its legislation regarding narcotic drugs on this point. To this he could only reply that questions of participation, complicity or conspiracy were not governed by the law on narcotic drugs but by the principles incorporated in the Netherlands Penal Code.

At the previous meeting, attention had been drawn to the Convention for the Suppression of Counterfeiting Currency, under Article 3, sub-paragraph (4), of which "attempts to commit, and any intentional participation in", certain acts were punishable. Was the Convention on the Suppression of Counterfeiting Currency less important than that on the illicit traffic in opium? Had the practical execution of the former Convention given any proof of incompleteness on that point? Why then did some Governments attach so much importance to sub-paragraph (d) in the Convention under discussion?

It was not proposed in the present Convention to settle once for all every conceivable action that might be taken by any Government in execution of international Conventions, but it was proposed to establish the minimum that every Government must and could do to make the Convention effective.

The Portuguese delegate had proposed to replace the text of sub-paragraph (d) by the words "combinations or agreements to carry out the offences specified in this article". That text involved an important alteration: instead of a plot to commit an offence, it presupposed a plot for the execution of the offence itself, but this, in M. van Angeren's view, was only one of the forms of participation, since each of the offenders combining to commit the offence was acting in participation with the others.

To return to Article 3 of the Convention for the Suppression of Counterfeiting Currency, he would urge the Conference to confine itself to the assumption of intentional participation in sub-paragraph (c) and to omit sub-paragraph (d), which was unacceptable to his country in its present form.

M. DA MATTA (Portugal) was not sure whether he had understood the Netherlands delegate. All the Portuguese delegation had done was to propose a slight change in wording. He presumed the Netherlands delegate thought that the words "intentional participation" adopted in sub-paragraph (c) also covered any criminal combination or agreement. He agreed with that view, and had made his proposal regarding sub-paragraph (d) before the decision on sub-paragraph (c) had been taken. As his amendment to sub-paragraph (c) had been adopted, his amendment to sub-paragraph (d) was unnecessary.

M. HORTA (Japan) referred to his amendment to sub-paragraph 2 (d), under which the wording would be as follows: "any combination or agreement to commit any of the offences mentioned under (a) and (b)". The reason for that amendment was that sub-paragraphs (a) and (b) gave a list of various categories of punishable acts, while sub-paragraph (c) referred to the methods of committing offences. To include sub-paragraph (c) in that enumeration would be to attempt to cover offences which were difficult to punish.

M. LACHKEVITCH (Union of Soviet Socialist Republics), having understood that the Portuguese amendment to sub-paragraph (d) was withdrawn, wished to take it up on his own behalf. His delegation attached great importance to that paragraph, and understood that it ensured punishment even if the act had not yet been committed. He considered that sub-paragraph (d) had a great preventive value in the suppression of the illicit traffic. For instance, if a syndicate were formed and obtained funds with a view to illicit traffic, this would constitute sufficient grounds for taking action, though no offences under (a) and (b) had as yet been committed. He therefore supported the original Portuguese proposal.

Dr. SCHULTZ (Austria) said the Committee of Experts had decided to insert sub-paragraph (d), in order that the formation of gangs of smugglers might be brought under the Convention. Such gangs played a very important part, and it was necessary to find means of suppressing them. He was, therefore, strongly in favour of retaining sub-paragraph (d) either in its original form or as amended by the Portuguese proposal.

Dr. Schultz pointed out that the inclusion of that paragraph did not involve changing the basis of national legislation; it was sufficient to create a special offence. For instance, the Austrian Government contemplated inserting a special paragraph in the Penal Code for the purpose.

The PRESIDENT suggested that, as regards the choice of words—that was to say “to commit”, as in the original text, or “to carry out”, as in the Portuguese amendment—an example might perhaps be taken from the draft Convention on Terrorism, which used the expression “conspiracy to commit”.

M. CONTOUMAS (Greece) gathered that, in M. da Matta's view, “intentional participation” covered, not only “inciting and aiding and abetting”, but also a “combination or agreement” with a view to committing an offence.

M. Contoumas would be obliged to oppose too wide an interpretation of the word “participation”, and he would prefer to retain sub-paragraph (d) in its original form. There might, of course, be questions of drafting with regard to the words “perpetrate”, “accomplish”, “execute” etc. in either of the two languages, but they were all more or less equivalent.

In his view, sub-paragraph (d) expressed an idea which was not covered by the words “intentional participation”.

The Convention on Terrorism had been mentioned on several occasions. He would point out that it was merely a draft Convention which had not yet been adopted, and the wording might still be changed by the jurists.

The Japanese amendment was, in his opinion, merely a question of drafting. He thought it was true that, when the Committee of Experts drafted sub-paragraph (d), they did not intend it to cover the acts mentioned in sub-paragraph (c). He thought it was quite obvious that the Conference could not take the view that it would be a criminal offence to form an association or enter into an agreement with a view to inciting, aiding or abetting. That would be going too far. He therefore preferred to retain sub-paragraph (d) in its present form.

The PRESIDENT explained that he had merely regarded the Convention on Terrorism as useful from a linguistic point of view and, for that reason, had borrowed from it the word “*accomplissement*”.

M. DA MATTA (Portugal) had thought that the discussion on sub-paragraphs (c) and (d) was concluded and that the Drafting Committee had been requested to submit a text. He saw that he was mistaken, as the discussion had been resumed. When he had spoken on sub-paragraphs (c) and (d), other amendments were under discussion, including the proposal to combine the two sub-paragraphs, and he had not objected, in principle, to that proposal.

He did not agree with the Soviet delegate that “combination” and “agreement” were not covered by the “intentional participation” mentioned in sub-paragraph (c), since they referred to the actions of two or more persons committing the offences mentioned under sub-paragraphs (a) and (b). Such “combination” or “agreement” might already have assumed the form of punishable acts or might still be at the stage of mental activity on the part of the individual and not have taken shape as an offence. In the former case, they should be and were covered by the expression “intentional participation”.

Under the Portuguese Penal Code, an agreement to commit an offence was punishable, even if it had not gone beyond the preparatory stage, and such an agreement was covered by the expression “intentional participation”. Other recent penal codes embodied the same conception.

M. ANTONIADE (Roumania) agreed with the President that the adoption of the form of words to be found in sub-paragraph (2) of paragraph 1 of Article 3 of the draft Convention for Prevention and Punishment of Terrorism: “Any conspiracy . . . to commit any of the acts . . .” would settle the difficulties which had arisen and give a text satisfactory to all concerned. Generally speaking, any new Convention dealing with questions of penal law should not deviate too much from texts already adopted for similar Conventions; a certain uniformity should be maintained. He had had a table drawn up comparing the provisions of the draft Convention on Terrorism with those of the present draft Convention as revised by the Committee of Experts and would communicate this table to the Secretariat for the information and guidance of the Conference.

In conclusion, M. Antoniadé stated his agreement with the proposal made by the President.

The PRESIDENT, on behalf of the Conference, thanked the Roumanian delegate for the offer of assistance made.

M. GORRA (Egypt), referring to the form of these sub-paragraphs, agreed with the Roumanian delegate as to the desirability of uniform texts, but believed, with the delegates of Greece, Portugal and the Soviet Union, that the point at issue was not one of form but of substance; it was a question whether “combination or agreement” could be regarded as covered by the term “intentional participation” or whether they must be considered as separate offences. In Egypt, there was a special legislative provision under which “combination” was treated as a separate offence. The question for the Conference to decide, therefore, was whether it approved of this view or whether the sense of the term “combination” was inherent in the expression “intentional participation”.

M. Gorra agreed with M. da Matta that, in the case of political crimes, a "combination or agreement" should be regarded as a separate offence liable to severe punishment, but doubted whether such a provision could be introduced into legislation designed to combat narcotic offences. Subject to those observations, he found himself in agreement with the text submitted by the Committee of Experts and with the views expressed by M. Contoumas and M. Lachkevitch.

M. KOUKAL (Czechoslovakia) admitted that the criminal laws of most countries regarded any "combination or agreement" to commit a crime as a punishable offence. He drew attention to the distinction between such "combination or agreement" and "conspiracy" ("*complot*"), which was an agreement to commit acts which were already expressly defined by legislation. The Convention should give the powers necessary for treating such agreements as specifically punishable. He accepted the proposals of the President and of the Roumanian delegate to bring the wording of sub-paragraph (d) into harmony with the text of the corresponding provision in the draft Convention on Terrorism.

The PRESIDENT asked whether the Portuguese delegation would agree to substituting the word "*accomplissement*" for "*exécution*" in the French text of its amendment to sub-paragraph (d).

M. DA MATTA (Portugal) agreed to the President's proposal.

The PRESIDENT drew attention to the conflict of views on the question whether "combination or agreement" covered the idea expressed in "intentional participation". His own view was that it did not; "intentional participation" was only punishable if the offence were actually committed. "Combination or agreement" need not, in itself, be a punishable offence, though it might, in certain countries, be looked upon as an offence *sui generis*.

Mr. DOWSON (United Kingdom) felt that the only really important issue raised during the discussion was whether the idea of "combination or agreement" was included in the words "intentional participation". The latter expression was not one with which they were familiar in the United Kingdom, though it was found in the criminal codes of several other countries. His delegation, therefore, was not interested in the question whether "combination or agreement" was covered by the words "intentional participation" in the amended sub-paragraph (c). His own view on this subject coincided with that of the President.

On the merits of sub-paragraph (d), his delegation took the view that, if it was to be included, it should be drafted independently and not be made, as it were, an appendage of the previous sub-paragraph.

The suggestion to substitute the term "conspiracy" for "combination or agreement" was a matter for the Drafting Committee. When the point had been discussed in the Committee of experts, he recollected that "conspiracy" was used as the equivalent of the French expression "*entente en vue de l'accomplissement*".

The PRESIDENT, summing up the debate, noted that the Conference had agreed to substitute the word "*accomplissement*" for "*exécution*", as in the Portuguese amendment, and "*perpétration*", as in the draft text of sub-paragraph (d).

There now remained the Japanese amendment to sub-paragraph (d), proposing the substitution of the words "offences mentioned under (a) and (b)" for "above-mentioned offences" in the experts' draft.

*On a vote being taken by a show of hands, 7 delegations voted for and 13 against the Japanese delegation's proposal.*

*The Japanese delegation's amendment was accordingly rejected.*

On sub-paragraph (d) being put to the vote, only 1 delegation voted against its adoption.

*Sub-paragraph (d) was adopted.*

#### *Paragraph 2 : Sub-Paragraph (e).*

*(e) Attempts which have reached the stage of a commencement of execution and, within legal limits, preparatory acts.*

The PRESIDENT pointed out that the amendments to this sub-paragraph submitted by the delegations of Poland, Portugal and Spain were virtually identical. They were as follows :

*Amendment proposed by the Spanish Delegation.<sup>1</sup>*

" To amend sub-paragraph (e) to read as follows :

" ' (e) Attempts and, within legal limits, preparatory acts.' "

<sup>1</sup> Document Conf. S.T.D. 14.

*Amendment proposed by the Polish Delegation.<sup>1</sup>*

"To delete the words 'which have reached the stage of a commencement of execution', and leave it to the legislation of the signatory States to define 'attempts' in accordance with the laws in force."

*Amendment proposed by the Portuguese Delegation.<sup>2</sup>*

"To delete the expression 'which have reached the stage of a commencement of execution' and substitute for the words 'within legal limits' the words 'within the limits laid down by internal law'."

M. DA MATTA (Portugal) moved the amendment standing in the names of the Spanish and Portuguese delegations to delete in this sub-paragraph the words "which have reached the stage of a commencement of execution". He pointed out that the amendment was also in harmony with the observations made by the Governments of Czechoslovakia, Egypt and Spain on this point.<sup>3</sup> A study of various criminal codes from the beginning of the nineteenth century down to the present day would show that, with hardly any exception, the idea of "attempt" embraced the idea of a "commencement of execution". The latter phrase was therefore superfluous.

M. TREBICKI (Poland) emphasised the fact that, in the new Polish Criminal Code promulgated in 1932, the idea of "attempts" had a very wide connotation and covered acts which had not necessarily "reached the stage of a commencement of execution". He urged the adoption of his delegation's amendment, as, in his view, the terminology of the Convention should be as wide as possible, in order not to hamper the application of national legislation. The text of the draft clause, though acceptable to Poland, would have the effect of limiting the enforcement of Polish criminal legislation in the matter. He moved, therefore, that the words "which have reached the stage of a commencement of execution" be deleted.

M. CASARES (Spain) observed that the Spanish delegation had already explained the Spanish<sup>4</sup> amendment to this sub-paragraph. As the Portuguese delegation's amendment was to the same effect, he withdrew the amendment tabled by his own delegation.

M. CONTOUMAS (Greece) supported the Portuguese delegation's amendment.

Mr. DOWSON (United Kingdom) noted that there was virtual unanimity on the amendments submitted. As a member of the Committee of Experts, he might perhaps explain that the words which it was proposed to delete had been inserted at the suggestion of the French expert, but were, in his opinion, unnecessary, as they suggested that there might be two kinds of attempts—attempts which had reached the stage of a "commencement of execution" and attempts which had not reached such a stage. No such distinction was made in the United Kingdom, where only those acts were recognised as attempts which, if continued, would result in the commission of an offence.

Dr. HOO CHI-TSAI (China) endorsed the remarks made by M. da Matta and Mr. Dowson in support of the Portuguese delegation's amendment. Under the Chinese Criminal Code, an "attempt" signified a "commencement of execution"; there could be no attempt without such a commencement. The words of the draft text should therefore be deleted.

M. BOURGOIS (France) explained that the additional words had been introduced in the draft text because the French expert had felt it inadvisable that the texts should contain expressions taken from the legal terminology of one particular country. He was, however, prepared to accept the Portuguese delegation's amendment.

The PRESIDENT noted that the Spanish delegation's amendment had been withdrawn and that those of Poland and Portugal were identical. The Conference would thus have to vote on the proposal to delete the words "which have reached the stage of a commencement of execution".

*By a unanimous vote, the Conference decided to delete the words in question.*

## TWELFTH MEETING

*Held on Monday, June 15th, 1936, at 3.30 p.m.*

*President : M. LIMBURG.*

### 19. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE I (continuation).

##### *Paragraph 2 : Sub-Paragraph (e) (continuation).*

The PRESIDENT called upon the Conference to discuss the second amendment proposed by the Portuguese delegation—namely,

“ To substitute for the words ‘ within legal limits ’ the words ‘ within the limits laid down by internal law ’.”

M. DA MATTA explained that this amendment contained the same idea as sub-paragraph (e) of the revised draft Convention, but expressed that idea more forcibly and more explicitly. As, however, the question was only one of form, the Portuguese delegation was ready to accept any phrase having the same effect that would meet with the approval of the Drafting Committee.

Mr. HARDY (India) supported the amendment proposed by the Portuguese delegation.

M. GORGÉ (Switzerland) also supported the text submitted by the Portuguese delegation.

M. CONTOUMAS (Greece) thought the two phrases amounted to the same thing, but preferred the text of the revised draft Convention, which was one that had been tried out in practice, for it appeared in the 1921 Convention for the Suppression of the Traffic in Women, and had been satisfactorily interpreted by all countries.

M. BOURGOIS (France) endorsed the observations of the delegate of Greece. The expression “ within legal limits ” meant “ in so far as is compatible with the national laws ”, and the effect had been that the contracting countries had defined certain preparatory acts.

Dr. Hoo Chi-Tsai (China) thought that, before choosing between the two texts proposed for sub-paragraph (e), the Conference must give its opinion on the interpretation to be given to the expression “ within legal limits ”. There were two possible interpretations: the wide interpretation, by which the signatory States were only obliged to punish acts preparatory to the offences specified in sub-paragraph 2(a) in so far as their national laws allowed; and the narrower interpretation, according to which countries which did not punish preparatory acts in the case of all the offences specified in sub-paragraph 2(a) would be obliged to pass new legislative provisions in order to cover those acts. It would be left open to them, however, to define in their national laws what was to be understood by preparatory acts.

The PRESIDENT thought there was no such distinction as the delegate of China had suggested. It was not a question of giving a wide or a narrow interpretation to the expression “ within legal limits ”. The text drawn up by the Committee of Experts meant that preparatory acts were to be punished, but only within the limits of the law of each country. The amendment proposed by the Portuguese delegation expressed exactly the same idea as the text prepared by the Committee of Experts, but more explicitly. Under neither text was any contracting party obliged to enact new legislative provisions for the punishment of preparatory acts. It should, however, be pointed out that, from the logical point of view, it was impossible to speak, in an international convention, of “ legal limits ”, since there was no uniform international law. As a jurist, the President preferred, therefore, the Portuguese amendment, which better expressed what the Committee of Experts had had in mind than did the text of the revised draft Convention.

Mr. DOWSON (United Kingdom) supported the Portuguese amendment and entirely agreed with the President's view.

With regard to the arguments that had been brought forward in favour of retaining the expression “ within legal limits ”, he thought the fact that a phrase already existed in other Conventions was no reason why the Conference should not change that phrase if it thought it too vague or open to objections as a matter of drafting. For his part, he had not, in the Committee of Experts, felt the expression “ within legal limits ” to be satisfactory, for it was impossible to determine its meaning. He therefore fully supported the amendment proposed by the Portuguese delegation.

<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

Dr. Hoo Chi-Tsai (China) interpreted the expression " within legal limits " in the same sense as the President; in other words, he was in favour of what he had called the wider interpretation. He thought this idea would be more clearly expressed by the following phrase: " . . . and preparatory acts, in so far as they are punishable and within the limits laid down by national law ", the limits laid down by national law meaning the limits which the national law defined. He would not, however, press for adoption of that formula, as he noted that the Conference was agreed on the interpretation to be given to the second part of sub-paragraph 2(c).

M. BOURGOIS (France) drew attention to the necessity of providing for the punishment of preparatory acts subject, however, to certain restrictions. He agreed that the expression " within legal limits " weakened the provision, but pointed out that its insertion had been considered necessary in the Convention for the Suppression of the Traffic in Women and that it had given complete satisfaction. He asked, therefore, that the Conference should adopt a similar phrase. He admitted that the phrase proposed by the Portuguese delegation might appear to be better than that in the revised draft Convention.

M. CONTOUMAS (Greece) said that, after having heard the arguments of the President and of Mr. Dowson, he was in favour of the phrase proposed by the Portuguese delegation. For the sake of uniformity, however, he thought he should recall that, in sub-paragraph 2(b), the expression " national law " had been used, and he proposed, therefore, that the expression in sub-paragraph 2(c) should likewise be " national law ", instead of " internal law ".

The PRESIDENT said he had been ready to accept the addition proposed by the delegate of China, but that he had perceived that this addition might give rise to a misunderstanding, as it might be taken to mean: in so far as such preparatory acts are punishable, not in national law, but in general. He hoped, therefore, that Dr. Hoo Chi-Tsai would not press for the addition and would accept the amendment proposed by the Portuguese delegation.

With regard to that amendment, the Conference should use a uniform phraseology, as M. Contoumas had pointed out, and the words " internal law " should be replaced by " national law ".

Dr. Hoo Chi-Tsai (China) had found a phrase which would guard against this misunderstanding, but since all the delegations were in agreement on the interpretation of the provision in question, he would be satisfied if the opinions expressed and the general agreement which existed were recorded in the Minutes.

M. DA MATTA (Portugal) agreed to the substitution of the words " national law " for " internal law ".

The PRESIDENT read the Portuguese amendment as thus modified:

" . . . within the limits laid down by national law, preparatory acts. "

*This amendment was unanimously adopted.*

#### *Paragraph 3 : Sub-Paragraph (a).*

*(a) Each of the acts specified in groups (a), (b), (c) and (d) of the second paragraph of this article shall, if committed in different countries, be considered as a distinct offence.*

The PRESIDENT observed that only one amendment had been submitted, that of the Portuguese delegation.

#### *Amendment proposed by the Portuguese Delegation.<sup>1</sup>*

" To replace the expression ' specified in groups (a), (b), (c) and (d) of the second paragraph of this article ' by the words ' specified in paragraph 2 of this article ' or ' specified in the previous article ', if the Portuguese proposal to put into separate articles each of the paragraphs of Article 1 is accepted. In the French text, replace the words ' *comme un acte distinct* ' by the words ' *comme une infraction distincte* '."

M. DA MATTA (Portugal) explained that the latter amendment was merely one of drafting. The phrase employed in the French text of sub-paragraph 3(a) of the revised draft Convention had seemed to be defective, in that it was obvious that acts committed in different countries must be considered as distinct acts. No doubt the Committee of Experts had meant it to be understood that they must be considered as distinct acts from the point of view of suppression and, accordingly, must constitute separate offences.

M. CONTOUMAS (Greece) was ready to support the amendment proposed by the Portuguese delegation, since the draft Convention for the Suppression of Terrorism also contained the expression " *infractions distinctes* " (" separate offence ") in Article 3, paragraph 2.-

<sup>1</sup> Document Conf. S.T.D. 17.



Dr. SCHULTZ (International Criminal Police Commission) pointed out that, in the Convention for the Suppression of Counterfeiting Currency, the term "*infraction distincte*" ("distinct offence") had been employed in a similar context (Article 4).

*On a vote being taken, the Portuguese amendments relating to sub-paragraph 3(a) were adopted.*

*Paragraph 3 : Sub-Paragraph (b).*

*(b) Any act done in preparation for, or in furtherance of, the commission in another country of any of the acts specified in groups (a), (b) and (c) of the second paragraph of this article shall be considered as a distinct offence.*

The PRESIDENT pointed out that the Conference had before it amendments submitted by the Portuguese delegation and by the French delegation.

*Amendment proposed by the French Delegation.<sup>1</sup>*

"To substitute the words 'which is preparatory to or tends to induce' for the words 'done in preparation for or in furtherance of'.

"To add at the end the following sentence: 'and penalised, in circumstances where, if committed in the country, it would constitute an offence against national law'."

*Amendment proposed by the Portuguese Delegation.<sup>2</sup>*

"To replace the words 'in furtherance of' by the words 'tending to facilitate', the expression 'specified in groups (a), (b) and (c) of the second paragraph' by the words 'specified in paragraph 2 of this article', and the word '*acte*' by the word '*infraction*' (French text only)."

M. BOURGOIS (France) explained that the words "in furtherance of" had seemed too wide. There were a great many acts which might be considered as having been done in furtherance of the commission of offences, but which did not come within the category of offences which were severely punishable and which constituted cases for extradition. The French delegate thought, therefore, that the words "tends to induce" were more exact.

M. LACHKEVITCH (Union of Soviet Socialist Republics) preferred the words "tending to facilitate" or "in furtherance of", the words "tends to induce" having too narrow a meaning, as they referred to the idea of initiative. For instance, an accomplice might play a great part in furthering the commission of an offence, but if he had not taken the initiative in that offence, he might escape punishment, were the words "tends to induce" to be adopted in sub-paragraph 3(b). Further, the delegate of the Soviet Union was in favour of amalgamating the two sub-paragraphs of paragraph 3.

M. GORGÉ (Switzerland) asked for explanations in connection with the meaning of sub-paragraph 3(b). Had the words "done in preparation for" and "(done) in furtherance of" a technical meaning or not? Was it a question of preparatory acts defined as such, or, generally speaking, of all acts intended to facilitate the commission of one of the offences specified in paragraph 2? If the word "*favoriser*" (done in furtherance of) had only a vague and quite general meaning and the basic idea of that sub-paragraph were retained, it would be necessary to insert the phrase proposed by the French delegation: "and penalised, in circumstances where, if committed in the country, it would constitute an offence against national law". Otherwise, the undertaking would not be sufficiently precise and might give rise to serious difficulties.

M. KOUKAL (Czechoslovakia) pointed out that the position was changed as a result of the adoption of the Portuguese amendment to sub-paragraph 3(a), as that sub-paragraph now covered, not only the offences specified in sub-paragraphs (a), (b), (c) and (d) of paragraph 2, but also the offences specified in sub-paragraph (e), whereas sub-paragraph 3(b) only applied to the offences specified in sub-paragraphs 2(a), (b) and (c).

Colonel SHARMAN (Canada) said that his Government would like to have explanations regarding the scope of the sub-paragraph under discussion.

He recalled that the necessity of preventing persons in a foreign country from plotting against the narcotic laws of some other country had been stressed by the Advisory Committee at its fifteenth session. It had been recommended that a clause to this effect should be inserted in the future draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, and this recommendation had been supported by the representatives of several countries, including the United Kingdom, India and the Netherlands. Such action would, indeed, be in conformity with Article 29 of the Geneva Convention of February 19th, 1925. Moreover, it had been stated that a provision of the draft Convention proposed by the International Criminal Police Commission applied to this case.

<sup>1</sup> Document Conf. S.T.D. 18.

<sup>2</sup> Document Conf. S.T.D. 17.



In its observations on the draft text of Article 1, at the time of the first consultation, the Canadian Government<sup>1</sup> had stated that any Convention arrived at should embody provision to be made by each country for legislation imposing adequate punishment for, among other offences, acts committed within each country's jurisdiction directed against the narcotic laws of other countries. As the first draft Convention had not contained any clause to that effect, Canada had drawn attention to the omission and had asked for a clause of this kind to be included. In the report of the Committee of Experts, it was stated that the insertion of such provisions was not practicable.<sup>2</sup>

It would seem, however, that sub-paragraph 3(b) of the revised draft Convention covered the suppression of acts infringing the narcotic laws of one country, committed by nationals of another country. Such, however, did not seem to be the opinion of the Committee of Experts, which, at the end of its comments on Article 1, had made the following observations :

"The Committee also took note of certain proposals which it did not find possible to incorporate in the text of Article 1 but which it considered were of sufficient importance to be mentioned in the report . . .

"The second proposal was to make punishable acts committed within the jurisdiction of one contracting party directed against the narcotic laws of any other contracting party. It was pointed out that the acceptance of a proposal of this kind was not practicable, and that it might raise considerable difficulties. Furthermore, the matters which it was intended to cover were to a large extent already provided for under groups (c) and (e) of paragraph 2 taken in conjunction with paragraph 3."

The Government of Canada, which attached great importance to the effective suppression of the category of offences in question, would like definitely to know whether the framers of the revised draft Convention had, in fact, discarded a part of the proposal for making punishable acts committed within the jurisdiction of one contracting party directed against the narcotic laws of any other contracting party, and, if this were the case, which were the points in that proposal which had been abandoned as impracticable.

Mr. DOWSON (United Kingdom) said that as several delegations had thought it desirable for a member of the Committee of Experts to give explanations on sub-paragraph (b) of paragraph 3, he would endeavour to do so, although it would be difficult to reconcile this paragraph with the preceding provisions. He must first give a short account of sub-paragraph (b), which had actually originated in Article 29 of the 1925 Convention :

"The contracting parties will examine in the most favourable spirit the possibility of taking legislative measures to render punishable acts committed within their jurisdiction for the purpose of procuring or assisting the commission in any place outside their jurisdiction of any act which constitutes an offence against the laws of that place relating to the matters dealt with in the present Convention."

The main idea of the authors of the paragraph under discussion was to comply with the suggestion made in the 1925 Convention by trying to find a formula under which States would be bound to enact the necessary legislative measures to punish the acts committed on their territory in furtherance of the illicit traffic elsewhere.

To illustrate the intention of the experts in redrafting sub-paragraph 3(b) and also the object of Article 29 of the 1925 Convention, he drew attention to the legislation of his own country. The Dangerous Drugs Act of 1923 provided that it was an offence for anyone to commit an act outside the United Kingdom against the law of another country which would be an offence if committed in the United Kingdom. Somewhat such provision was contemplated by sub-paragraph 3(b). It might be said, and doubtless with reason, that up to a certain point this was covered by the preceding provisions. Nevertheless, in the minds of its authors, sub-paragraph (b) was an illustration of the direct application of the principles already laid down. He thought that it was of value, therefore, because it drew attention to the manner in which the contracting parties should give effect to the obligations arising out of the preceding provisions of Article 1.

The Canadian delegate had just drawn attention to a certain passage in the experts' report. Mr. Dowson was bound to admit that it seemed somewhat inconsistent with the explanations he had just given and, for his part, he was not altogether in agreement with it. He did not remember exactly what had occurred in the Committee at that time. He would look up the Minutes before the end of the discussion and might have occasion to revert to the question.

The United Kingdom Government attached some importance to sub-paragraph 3(b), which described clearly a method by which the principles laid down in Article 1 could be applied. He did not know whether his explanations were satisfactory to M. Gorgé, who had asked for information as to the somewhat obscure wording of sub-paragraph 3(b). He would willingly supplement his explanations, if necessary.

M. CONTOUMAS (Greece) pointed out that M. Gorgé, who was not a member of the Committee of Experts, had said he was not quite clear as to the meaning of sub-paragraph 3(b). M. Contoumas had been a member of the Committee of Experts, but must admit that there did

<sup>1</sup> Document Conf. S.T.D. 1, Annex 2.

<sup>2</sup> Document Conf. S.T.D. 2, Annex 3.

not seem to him to be much reason for that sub-paragraph. Either he had not understood it or it was unnecessary. The United Kingdom delegate had referred to Article 29 of the 1925 Convention, but it seemed to M. Contoumas that effect had already been given to the request contained in Article 29 by the provision that the contracting parties should punish the wilful commission of offences, attempts, preparatory acts, etc., because, under sub-paragraph 3(a), all acts committed in different countries were considered as distinct offences.

Before the present wording of sub-paragraph 3(b) could be interpreted, it must first be ascertained what the contracting parties would have to do under that sub-paragraph. According to the text proposed by the Portuguese delegation, "Any act in preparation for or tending to facilitate the commission in another country of any of the acts specified in paragraph 2 of this article shall be considered as a distinct offence."

There was no connection between that and the previous sub-paragraph, and, in the first place, it imposed on the contracting parties no obligation to punish, but only to consider the acts specified as distinct offences. Under the provisions of paragraph 2 of Article 1, the contracting parties undertook to punish the acts enumerated, but the same obligation was not formulated in sub-paragraph 3(b). Consequently, the Greek delegate did not think that, under the present wording of that sub-paragraph, States would be bound to punish such acts. It must be stated specifically, if the text was to be retained.

He must make a further observation. Either the acts defined in this sub-paragraph 3(b) were covered by one of the categories mentioned in paragraph 2 (inciting, aiding and abetting, etc.) and, as such, were punishable under paragraph 3, or something else, something more, was involved, in which case it must be defined. The present text was too vague. An expression such as "any act tending to facilitate" might lead to paradoxical interpretations. Suppose, for instance, a dealer in the United States received an order for office equipment for France and knew that it was for a band of traffickers, he could be charged with an offence under the text, as the equipment of an office for traffickers was of a nature to facilitate their operations.

Briefly, the best solution would be to delete sub-paragraph 3(b). The wishes of those who were anxious to give practical effect to Article 29 of the 1925 Convention were already met, because sub-paragraph 3(a), which referred to separate punishment for each of the acts enumerated, had been adopted, and because, moreover, under paragraph 2, the phrase "acts wilfully committed" had already been given the widest interpretation. Lastly, it had also been agreed to punish preparatory acts. Once again, M. Contoumas referred to the Conventions on counterfeiting currency and terrorism, two precedents in favour of the deletion of sub-paragraph 3(b). Those two Conventions contained a provision similar to sub-paragraph 3(a), but nothing like sub-paragraph 3(b).

The PRESIDENT thought that, before asking the movers of the amendment (namely, the Portuguese and French delegates) to speak, he should make certain observations in order that they might reply to them.

The Swiss delegate had been the first to have the courage to say that he did not quite understand sub-paragraph 3(b), and the Greek delegate had made a similar statement. The President agreed with them.

Where, in Article 1, were the punishable acts to be found? They were enumerated in paragraph 2 under (a), (b), (c), (d) and (e). Then came sub-paragraph 3(a), which said that, if any of the acts specified in the above groups were committed in different countries, each act should be considered as a distinct offence. Lastly, came sub-paragraph 3(b). Take, by way of example, any act "done in preparation" for one of the above-mentioned acts. It had just been said that preparatory acts were only punishable in accordance with the national law. But under the sub-paragraph in question, a preparatory act was to be punishable even in another country. That was incomprehensible. To take a second example, "an act in furtherance of the commission" of one of the acts mentioned. If it were thought that the term "acts wilfully committed", as mentioned in paragraph 2, was not sufficiently wide to cover the idea "in furtherance of", was it desired to add that idea to that of acts wilfully committed? The President did not propose to enter into the substance of the question. What he was anxious to bring out was that he did not understand the reason for sub-paragraph 3(b), which was left in the air and did not punish anything. Moreover, it contained ideas which might be wider than the idea of acts wilfully committed.

M. GORGÉ (Switzerland) was glad he had asked a question about the scope of the provision under discussion. He thanked the delegates of Canada and the United Kingdom for their explanations. The position now seemed quite clear, as, in fact, the provision in question originated in Article 29 of the 1925 Convention. Under that Convention, the contracting parties assumed an obligation which, moreover, was not wide in scope, since it merely bound them to "examine in the most favourable spirit the possibility of taking legislative measures to render punishable acts committed within their jurisdiction for the purpose of procuring or assisting the commission in any place outside their jurisdiction of any act which constituted an offence against the laws of that place relating to the matters dealt with" in the Convention on narcotics.

Switzerland was at present revising the law on narcotic drugs, and a new law would, perhaps, be enacted in a few months' time. Switzerland would, therefore, be able to "examine in the most favourable spirit the possibility" of taking the measures in question. M. Gorgé could not say at once what would be the decision of the Federal authorities, but, having heard the delegates of Canada and the United Kingdom, he wondered whether their observations could not be taken into account by the introduction into the Convention under discussion of some reference to

Article 29 of the 1925 Convention. In the beginning, M. Gorgé would have preferred simply to delete sub-paragraph 3(b), but, as most of the countries represented had accepted Article 29 of the 1925 Convention, which constituted a programme and an undertaking, it was not for the present Conference to undo what had been done in 1925. In those circumstances, he thought the difficulty could be settled fairly rapidly by means of a text in that sense, which would meet all cases—namely, the case of a State that had already taken the necessary measures and the case of a State that had not taken them as yet :

"Should the contracting parties, in accordance with Article 29 of the 1925 Convention, have taken legislative measures to render punishable acts committed within their jurisdiction for the purpose of procuring or assisting the commission in any place outside their jurisdiction of any act which constitutes an offence against the laws of that place relating to the matters dealt with in the present Convention, any act tending to facilitate, or in furtherance of, the commission of any of the above acts shall be considered as a distinct offence."

In that way, the Conference would make clear the scope of Article 29 of the 1925 Convention. M. Gorgé's proposal was a conciliatory proposal. Further, it did not involve a definite undertaking to punish, as, in his opinion, it was not advisable for the present Conference to go further than Article 29, which was only a promise.

M. DA MATTA (Portugal) noted that the French delegation had suggested that the words "done in preparation for or in furtherance of" should be replaced by "which is preparatory to or tends to induce". At a previous meeting,<sup>1</sup> in connection with a similar amendment to sub-paragraph 2(c) moved by the French delegation, M. da Matta had already objected to the adoption of the word "inducing". He did not want to go at length into the objections to the use of an expression which had different meanings in penal legislations. On the contrary, the words "tending to facilitate" were found in most penal codes, and for that reason would be preferable to the words "in furtherance of".

The purpose of the Portuguese proposal was merely to recast a text that had been somewhat loosely drafted. After the explanations of the United Kingdom delegate as to the origin of the sub-paragraph under discussion, and the observations of various other delegates, particularly those of Switzerland, Czechoslovakia and Greece, he thought the procedure to be followed was clear. The contents of sub-paragraph (b) were already covered by the preceding provisions, and consequently that sub-paragraph contained nothing new. In those circumstances, he proposed that the contents of sub-paragraph (b) be simply deleted. On the other hand, after M. Gorgé's observations, he did not think their deletion would prevent the Conference from adopting a provision based on Article 29 of the 1925 Convention. At the same time, it might be better to put it in the form of a recommendation.

M. BOURGOIS (France) said that the French delegation would agree to replace the words "in furtherance of" or "tends to induce" by "facilitates", which was, moreover, the term used in the French narcotics law. On the other hand, the President had pointed out that, in its present form, sub-paragraph 3(b) was ineffective. The French delegation accordingly proposed to supplement that provision by stating that the act in question "would be penalised", which implied a necessary restriction: the act could, in fact, only be penalised in circumstances where, if committed in the country, it would constitute an offence against national law. For instance, as the cultivation of the raw materials of narcotic drugs was not a punishable offence in France, it would not be covered by that provision.

Various delegations had proposed that the whole of sub-paragraph 3(b) should be omitted. The French delegation would ask the Conference to consider whether, in any case, it would not be advisable to introduce in some part of the Convention the conception that offences could only be punished if the act, being committed in the country, constituted an offence against national law. It might be said that that concept was implicitly embodied in the Convention, but the Conference might, perhaps, consider it preferable explicitly to mention it.

It had also been proposed to insert a recommendation in the Convention. Care should be taken not to weaken the Convention's provisions. The Drafting Committee might, perhaps, consider the possibility of inserting a formula which would relieve any misgivings there might be regarding the matter—for instance, by saying "subject to the foregoing provisions". When the French delegation had urged that the present Convention should be drawn up, its object was to be able to get hold of and punish the gangs established in certain countries for the purpose of organising smuggling between two other countries. In France, in particular, those persons merely committed "preparatory acts" (exchange of correspondence, despatch of funds, etc.). The French authorities wished to be very strongly armed against those gangs, and were anxious that the Convention should not be weakened in any way.

The PRESIDENT considered it his duty to warn the Conference against a possible confusion of the issue. He was endeavouring to observe the utmost impartiality in the matter, because it was for the Conference to decide how far it wished to go. On the other hand, it was the President's duty to draw attention to all cases in which confusion might arise with embarrassing legal consequences. In his opinion, the best course would be purely and simply to omit sub-paragraph 3(b). The Swiss delegate's suggestion did not take the matter any further.

<sup>1</sup> See page 66, V.

The President could, however, reassure the United Kingdom delegate. Under Article 29 of the 1925 Convention, the contracting parties were required to examine in the most favourable spirit the possibility of taking legislative measures to render punishable acts committed for the purpose "of procuring or assisting the commission . . ." The Conference had already given effect to Article 29 by adopting the provisions of paragraph 2 relating to "aiding and abetting". The delegations had agreed that those two words were covered by the term "intentional participation".

Some might object that sub-paragraph 3(b) went still further, since it referred to "any act done in preparation for" the commission in another country of the acts specified. What, however, had the Conference agreed to as regarded preparatory acts? That they would only be punishable in accordance with national law. In those circumstances, the President asked the delegations, and the Swiss delegation in particular, whether they really meant to go so far as to punish, on behalf of another country, acts which they had not considered it necessary to punish on their own behalf under their national legislation? Further, that seemed so illogical that the French delegation appeared to have been anxious to forestall the objection by proposing to add sub-paragraph 3(b) the words "and penalised", stipulating that the act should be punished only in circumstances where, if committed in the country, it would constitute an offence against national law. It was obvious that if the act were punishable in both countries there would be no need to insert that provision.

In short, the President thought that the best solution was to omit sub-paragraph 3(b), since that sub-paragraph might have highly embarrassing consequences. He would abstain for the moment from discussing in greater detail the French amendment, and particularly the words "in the country", which were somewhat vague.

M. KOUKAL (Czechoslovakia) recalled that the Greek delegate had drawn attention to the fact that paragraph 3 contained no provisions regarding the punishment of the acts in question, and the President had made an observation to the same effect. It should be noted that the paragraph under discussion had an entirely different aim. It dealt, not with new punishable acts, but with the allocation of jurisdiction between the countries concerned. The punishment of the acts in question was dealt with in paragraph 2, and there was no need to insert in paragraph 3 another clause relating to the same matter. By adopting the Portuguese amendment, the Conference had fulfilled its duty of allocating jurisdiction between the countries concerned. All the necessary provisions were included in the first sentence of the Portuguese amendment, which covered all the acts referred to in paragraph 2. The second sentence in that amendment and also sub-paragraph 3(b) of the original text were no longer necessary. The Czechoslovak delegation accordingly proposed to omit sub-paragraph 3(b) and the second sentence in the Portuguese amendment.

As regarded the conciliatory formula suggested by the Swiss delegate, M. Koukal pointed out that the Conference had already fully met the obligations assumed under Article 29 of the 1925 Convention by including in paragraph 2 all the acts enumerated, whether they were committed in the national territory or in the territory of another contracting party. Lastly, as the Czechoslovak delegate had already stated, the provision was now complete, since jurisdiction had been allocated in accordance with sub-paragraph 3(a). In those circumstances, there was no need to overload the present Convention by a reference to Article 29 of the 1925 Convention.

Mr. DOWSON (United Kingdom) welcomed the opportunity for discussion afforded by the inclusion of sub-paragraph 3(b) in the present draft, since it made it possible to ascertain the general views of the Conference on one of the main objects which it was desired to achieve through the provisions of paragraph 2 and sub-paragraph 3(a).

Speaking less as a jurist than as United Kingdom delegate, Mr. Dowson said that, in its 1933 report to the Council, the Advisory Committee had pointed out that the new draft Convention had a second aim. The Advisory Committee had referred, in particular, to Article 29 of the 1925 Convention and had stated that<sup>1</sup>:

"In the majority of countries, no provision is made in the law for punishing persons who arrange or procure, or who take part in arranging or procuring, the smuggling of opium or drugs in territories outside the country in which they are residing. It has long been well known that many notorious traffickers take no direct part themselves in handling or transporting the contraband goods, and, where the handling and transporting take place entirely outside the country where the trafficker resides or carries on his business, it is in most cases impossible to touch him, even though his complicity is established."

The discussion that had just taken place had therefore thrown very useful light on the Conference's views as to the extent to which the present draft would enable that aim to be achieved.

The United Kingdom delegate appreciated the legal objections raised to sub-paragraph 3(b) and particularly the suggestion made by M. Gorgé. He hoped that efforts would be made to draw up an article on the lines indicated by the Swiss delegate, which would deal satisfactorily with that aspect of the question—one of the most important from the point of view of the United Kingdom Government. In the absence of a provision of that kind, it might be difficult to see how the aim to which he had just referred could be fully realised by the provisions of paragraph 2, sub-paragraphs (a), (b), (c), (d) and (e). Subject to the President's decision, he suggested that M. Gorgé's proposal should be referred to the Drafting Committee.

<sup>1</sup> Document C.385.M.193.1933.XI, page 31.

M. BOURGOIS (France) assumed that the Conference would decide to omit sub-paragraph 3(b). In that case, the addition proposed by the French delegation would no longer be appropriate. He thought, however, that it would be advisable to insert that addition somewhere in the Convention, since Article 12 of the present draft did not appear to cover the matter completely.

The PRESIDENT understood that the majority of the Conference was in favour of omitting sub-paragraph 3(b). He would therefore put that proposal to the vote. If it were adopted, he would suggest, in order to meet the wishes of the United Kingdom delegate, that the Conference should agree to submit M. Gorgé's proposal to the Drafting Committee. The Drafting Committee would see whether it was desirable and possible to insert an article on those lines.

*The Conference decided, by 26 votes, to omit sub-paragraph 3(b).*

*It agreed that M. Gorgé's proposal should be referred to the Drafting Committee.*

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### THIRTEENTH MEETING.

*Held on Tuesday, June 16th, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

#### 20. Examination, at a First Reading, of the Draft Convention : Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

##### ARTICLE I (continuation).

*Portuguese Proposals to substitute the Word " fait " for the Word " acte " throughout this Article, and to separate the Various Paragraphs of the Article into Individual Articles.<sup>2</sup>*

*The Conference decided to refer these questions to the Drafting Committee.*

*Egyptian Proposal to add a Further Paragraph to Article I.<sup>3</sup>*

M. GORRA (Egypt) recalled<sup>4</sup> that he had proposed to refer to this question later in the discussion as the paragraph in question did not necessarily come under Article 1.

*M. Gorra's proposal was adopted.*

*Definition of the Term " Extraction " : Constitution of a Sub-Committee.*

The PRESIDENT recalled that M. de Vasconcellos<sup>5</sup> had asked the Conference to define the term " extraction ".

M. BOURGOIS (France) said that " extraction " meant the action of extracting—that was to say, of withdrawing a body from a substance which already contained it. It was usually performed by a simple physical or chemical process—for instance, with the use of a solvent, the insoluble products being eliminated by steeping, infusion, etc. By this means the active principle—particularly alkaloids—was obtained.

" Preparation " was the operation by which a body was obtained which did not already exist in the raw material or could only be withdrawn from it by means of a more or less complicated chemical process (morphine from the poppy).

The word " preparation " would be sufficient in the Convention, but there was no reason why the word " extraction " should not be added.

Colonel SHARMAN (Canada) said there was one point which should not be overlooked. It was chemically possible, but not commercially profitable, to extract morphine from codeine. As the price of morphine was rising, this operation might some day become commercially profitable.

Major COLES (United Kingdom) thought that the English words " manufacture " and " preparation " were sufficiently wide to cover anything that might be termed extraction. If no sound reason could be adduced for using the word " extraction ", it would be better to omit it.

Dr. HOFFMAN (Panama) thought the process described by Colonel Sharman was covered by the term " conversion ".

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<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>2</sup> Document Conf. S.T.D. 17.

<sup>3</sup> Document Conf. S.T.D. 15

<sup>4</sup> See page 34.

<sup>5</sup> See page 15.

Colonel SHARMAN (Canada) did not agree, since some codeine might still be left after the operation had been completed.

M. DA MATTA (Portugal) thought that, as the Committee of Experts had used the word, the Conference, in omitting it, should explain that it did so because the idea was covered by other words used in paragraph 2 of Article I.

Mr. ANSLINGER (United States of America) said the word "extraction" was used in the 1931 Convention in connection with the wide exemption given to morphine preparations. Morphine could be extracted from those preparations. That operation could not be described as preparation or manufacture.

M. CASARES (Spain) was afraid of hasty decisions to omit words from such an important Convention. The fact that the word had not been used in previous Conventions was no argument, since the present Convention had a much wider scope. The term "extraction" might include such acts as the incision of poppy-heads, which might not otherwise be covered by the Convention. He was in favour of retaining the word "extraction". Even if it were unnecessary, it could do no harm and might cover cases which were not otherwise provided for.

Dr. SCHULTZ (Austria) agreed. The word had been used both in the first text drawn up by the Advisory Committee and in the second text revised by the Committee of Experts. Those bodies had no doubt had good reason for using the word. Moreover, it appeared in the 1925 Convention and in the Hague Convention.

M. BOURGOIS (France), referring to Colonel Sharman's remark regarding the conversion of morphine into codeine, mentioned a work published by the United States Treasury Department, Public Health Service, entitled "Chemistry of the Opium Alkaloids". This was an important and authoritative work; it stated, on page 148, that codeine had not been converted back into morphine.

Dr. Hoo Chi-Tsai (China) was in favour of retaining the word "extraction", as it might cover acts which were not otherwise provided for in the Convention. M. Casares had spoken of the extraction of opium by making an incision in poppy-heads. This was not extraction in the technical sense. Even if it were the correct meaning of the word, there would be a contradiction between the text of paragraph 2(a), which related to international Conventions and contained the word "extraction" and the text of paragraph 2(b), which related to national law and in which the word "extraction" did not appear. If certain countries did not intend to punish the cultivation, gathering, etc., under paragraph 2(b), how could they, under paragraph 2(a), punish extraction, which could be assimilated to gathering? If the term could refer to the incision of poppy-heads, means must be found of avoiding this contradiction in the case of countries which did not propose to punish offences under paragraph 2(b).

M. TELLO (Mexico) was in favour of retaining the word for two reasons. In the first place, the word "extraction" was commonly used in the Advisory Committee—for instance, in the Progress Report, document O.C.1624,<sup>1</sup> which referred to the extraction of morphine from the dried poppy plant. Secondly, the use of the word might close the door to attempts at evasion.

M. DELGORGE (Netherlands), in reply to the Chinese delegate, pointed out that the Governments undertook to punish extraction, which was contrary to the provisions of international Conventions. Incision was not contrary to such Conventions.

Dr. Hoo Chi-Tsai (China) said that if the incision of poppy-heads were carried out by unauthorised persons, it should be punishable, as it was contrary to the Conventions, which provided for the establishment of supervision over the production of raw opium. Conversion or manufacture was also not contrary to international Conventions, if it were carried out by authorised persons.

*The Conference decided to appoint a Sub-Committee to give an authoritative definition of "extraction" consisting of the delegates of the United Kingdom, Canada, France, Japan, Portugal, Spain, the United States and Yugoslavia.*

#### *Adulteration of Narcotic Drugs : Reference of the Question to the Legal Committee.*

M. CASARES (Spain) wished to refer to a new feature of the illicit traffic—namely, the adulteration of drugs or their replacement by harmless or inert substances. The Advisory Committee had considered that the attention of the Conference should be drawn to this question.

Cases of adulteration in the illicit traffic had become more and more frequent and some countries had enacted penalties for this offence. In Switzerland, it was proposed to introduce a law, providing a penalty of 10,000 francs or one year's imprisonment. The Conference was

<sup>1</sup> See Annex 2, document C.290.M.176.1936.XI, page 136.



naturally not concerned with the fact that the traffickers sold goods under false pretences, but with attempts to carry on illicit traffic, even if the goods proved to be adulterated or replaced by harmless goods.

The Advisory Committee, at its session in May, considered that the present meeting of the Conference constituted a good opportunity of consulting the numerous experts present. It had passed a resolution on the subject.<sup>1</sup>

M. Casares merely desired to ask whether the Conference wished to deal with this question or not. If so, the Legal Committee might be requested to prepare a text on the subject.

M. DE VASCONCELLOS (Portugal) supported the suggestion that this question should be considered by the Conference and proposed that the report and resolution of the Advisory Committee should be distributed to the delegates. If the Conference could not see its way to drafting an article on the subject, it might, at any rate, express a recommendation in the Final Act.

Dr. SCHULTZ (International Criminal Police Commission) considered that this question deserved to be considered by the Conference. It was an important one, and he had himself originally brought it to the notice of the Advisory Committee. He described a case which had occurred in Belgium when the trafficker had been acquitted because it had been impossible to convict him under Belgian law. Some countries, such as Germany, the United Kingdom and Canada, had solved the problem by providing that persons engaged in the illicit traffic in drugs and supplying adulterated goods should be punished in the same manner as if the drugs were genuine. He doubted whether it would be advisable to include an article in the Convention on this subject, and suggested that the question might be most suitably covered by a recommendation in the Final Act.

M. CONTOUMAS (Greece) questioned whether the proposal of M. Casares, interesting though it was, could properly be discussed by the present Conference. In his own view, a distinction should be made between substances containing a certain percentage of narcotic drugs and those which contained practically none. In the former case, the provisions of the draft Convention were applicable; as regards the latter, he very much doubted whether it constituted an infringement of the narcotics laws. He could, of course, understand the desire of the authorities of certain countries not to leave cases of the second type unpunished, but he did not quite see how such offences could be prosecuted and punished in the same way as offences in regard to narcotic drugs, since they merely constituted a particular kind of fraud or breach of trust. The Conference might even expose itself to ridicule if, for purposes of punishment, it attempted to place harmless substances, such as common flour or boric acid, on a par with narcotic drugs properly so called, seeing that its object was to deal with the prevention and punishment of narcotics offences. It was possibly gratifying to find that traffic in adulterated "drugs" existed, since, on the one hand, this proved that the existing regulations regarding narcotic drugs had borne fruit and, on the other, encouraged the hope that addicts would eventually be cured of their vice.

Colonel SHARMAN (Canada) explained how the Canadian authorities had, some eight or nine years previously, found a way of stopping trafficking in drug substitutes. Under the legislation then and now existing, it was an easy matter to prosecute the vendors or purchasers of adulterated drugs, but other variations of the same offence had been more difficult to deal with. There were, for instance, the vendors of substances containing no narcotic drugs whatsoever, who might either be persons selling, for example, novocaine for cocaine, or the straight "confidence man", who usually dealt in larger quantities, and, in order to close a deal, had to supply a sample of the real article. This he usually did by fraudulently obtaining a medical prescription. There was also the case of the trafficker, who, in order not to fall into a police trap, would deliberately deliver to a new customer sugar of milk or some other such substitute instead of the narcotic drug negotiated. If his suspicions regarding the purchaser proved correct, he could not then be charged with any offence, while, if the customer were a genuine addict or trafficker, he could always arrange to have the substitute exchanged subsequently for the real article.

To circumvent these various devices, the Canadian Government had, in 1929, amended the relevant provision in its legislation to read :

"Every person who manufactures, sells, gives away, or distributes any narcotic drug, or any substitute held out or represented to be a drug, shall be guilty of an offence."

The problem was, therefore, one which called for action.

M. TELLO (Mexico) pointed out that the abuses to which the Spanish delegate had drawn the Conference's attention were not only national but international in their effect. Members of the Advisory Committee, for instance, were well aware that cases of frauds in the narcotic drugs traffic had to be reported to Geneva, and involved the countries concerned in rather unpleasant publicity.

A cognate matter to which he might also draw attention was the counterfeiting of tickets and labels, which was widely practised by drug traffickers. He left it to the Conference to decide whether the question was one to be discussed by it and possibly included in the draft Convention.

<sup>1</sup> See the report of the Advisory Committee to the Council on the work of its twenty-first session, document C.278.M.168.1936.XI., page 6.



M. LACHKEVITCH (Union of Soviet Socialist Republics) believed that the real problem was confined to what the Advisory Committee had described as complete adulteration, which could not strictly be regarded as part of the illicit drug traffic, though it provided useful cover for that traffic. The problem, to his mind, was more closely connected with penal law in general. After a reference to the comments made on the question in the Advisory Committee's report to the Council and to the special legislation enacted by the Canadian Government on the subject, M. Lachkevitch suggested, in conclusion, the adoption of a recommendation that, in countries where such abuses were not covered by other provisions of the criminal code, such as fraud, etc., consideration should be given to the advisability of introducing special rules for this class of operations.

Mr. FULLER (United States of America) warmly supported the proposal made by the Spanish delegate. Owing to the successful activities of the narcotics police and the inability of addicts or traffickers to buy pure narcotic drugs, the practice of adulterating drugs in the illicit traffic had greatly increased during the last three or four years in the United States. If the substances dealt in contained any narcotic, prosecutions could be instituted, but if the substance were a complete substitute, such was not the case. The Canadian delegate had shown the bearing which the question had on the development of the illicit traffic. Mr. Fuller hoped, therefore, that the matter would not be overlooked, and that the Conference would embody its views on the subject either in an article of the Convention or in a recommendation.

M. BOURGOIS (France) had recommended the Advisory Committee to bring this problem to the attention of the Conference. The issues involved were too difficult and complicated for him to express any considered opinion at the moment. The abuse in question involved two kinds of operations—selling or offering, and buying or demanding. In the draft Convention power was given to punish sale, purchase and offering, but there was no reference to applying or asking to purchase. Close attention would, therefore, have to be paid to the wording of any recommendation proposed. The first essential, however, was to obtain from the Secretariat all the available information on the subject, particularly as to the legislation already in force in certain countries.

M. TREBICKI (Poland) said that the proposal of the Spanish delegate raised a very interesting question of criminal law, but he felt that little would be gained by embodying it in an international Convention. The matter could be quite effectively dealt with under national legislation. He had already referred to the wide interpretation given to the term "attempts" in the new Polish Criminal Code, and believed that the Polish authorities would have no difficulty, accordingly, in punishing the purchase of inoffensive substances as narcotic drugs. In the case of the seller, he agreed that the problem was more difficult; it would probably be necessary, under the Polish Criminal Code, to prove that the vendor knew he was selling a dangerous drug. M. Trebicki agreed with the Soviet delegate that such abuses were closely connected with the illicit traffic. If, for instance, the fraud were perpetrated on the basis of samples, the case could be brought under the offence of "offering" in paragraph 2(a) of Article 1.

He supported, in conclusion, the suggestion of the United States delegate to draw the attention of Governments to the problem by means of a recommendation inserted in the Final Act.

Dr. SCHULTZ (Austria) pointed out that the offence of asking for or demanding a narcotic drug could be brought under paragraph 2(c) of Article 1—that was to say, inciting to the commission of a prohibited act.

The PRESIDENT agreed that the Spanish delegate had raised an extremely interesting question, but the matter was not one which could be brought within the purview of the present Conference. His own view was that the sale of a partially adulterated drug would undoubtedly come under the provisions of Article 1. If the substance sold were not a narcotic drug, the offence came under the provisions of national legislation, which might either regard it as fraud or false pretences, or as a special offence. Owing to the varying interpretations of national criminal codes, it would be extremely difficult to draft an article worded broadly enough for an international convention, but it might be possible to include a recommendation on the subject in the Final Act. Furthermore, Governments had not been consulted on this particular question, so that the Conference was certainly precluded from embodying it in an article of the draft Convention.

M. CASARES (Spain) could not admit that the Conference was incurring ridicule by discussing a question which had been raised by the Advisory Committee and provisions for which had already been introduced into the legislation of Canada and Germany. As most of the speakers in the discussion had supported the idea, he suggested that his proposal might form the subject of a recommendation in the Final Act.

*The Conference decided to ask the Legal Committee to say whether a recommendation on the question raised by the Spanish delegate could be drafted.*

*Article 1 as a whole was adopted at a first reading.*

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FOURTEENTH MEETING.

Held on Tuesday, June 16th, 1936, at 3 p.m.

President: M. LIMBURG.

21. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

ARTICLE 2.

*In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 1 shall, subject to the conditions prescribed by domestic law, be recognised for the purpose of establishing habitual criminality.*

M. DA MATTA (Portugal) noted that the wording of this article corresponded to that of Article 6 of the Convention for the Suppression of Counterfeiting Currency and of Article 5 of the draft Convention for the Suppression of Terrorism, and was the same as in the two basic acts, except that in the French text the words "*faits prévus*" were replaced by the words "*actes visés*". Article 2 only concerned a few countries, for the majority of States did not recognise the principle of the international recognition of previous convictions. That principle was held to be incompatible with the sovereignty of States in the matter of the suppression of crime which, in the majority of countries, depended solely on the national law. Among the codes that recognised that principle might be mentioned the Norwegian Penal Code of 1905, the Italian Penal Code of 1931, the Penal Code of the State of New York of 1881 and the Mexican, Swiss and Polish codes. Most of the codes did not admit that principle. But the fact that it was not widely applied was an additional reason for adopting Article 2 of the revised draft Convention.

Article 2 was adopted, subject to the reservation that if, in the French text of Article 1, the word "*acte*" were replaced by the word "*fait*", a like change would be made in Article 2.

ARTICLE 3.

1. *In countries where the principle of extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of any offence referred to in Article 1, without having been punished therefor, shall be prosecuted and punished in the same manner as if the offence had been committed in the said territory, even in a case where the offender has acquired his nationality after the commission of the offence.*

2. *This provision does not apply if, in a similar case, the extradition of a foreigner cannot be granted.*

The PRESIDENT observed that the Conference had before it two amendments, one by the Portuguese delegation and the other by the Swiss delegation.

*Amendment proposed by the Portuguese Delegation.*<sup>2</sup>

"To add the following paragraph:

"Countries which recognise the principle of extradition of their nationals undertake to accede the applications for the extradition of such of their nationals as, being in their territory, are guilty of the commission abroad of the offences dealt with in Article 1, even if the extradition treaty applicable to the case contains a reservation on the subject of extradition of nationals."

*Amendment proposed by the Swiss Delegation.*<sup>3</sup>

"To add, after paragraph 1, the following paragraph:

"The offender will not be prosecuted or punished for the same offence in the country making the applications or within the territory of another Contracting Party if he has already served a sentence which he received in his country of origin."

M. GORGÉ (Switzerland) said that Article 3 was based on the principle that nobody could be punished twice for the same offence. According to that article, nationals who had returned to the territory of their own country, after the commission abroad of any offence referred to in Article 1, without having been punished therefor, were to be prosecuted and punished in the same

<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>2</sup> Document Conf. S.T.D. 17 (a).

<sup>3</sup> Document Conf. S.T.D. 23 (a).

manner as if the offence had been committed in the said territory. In other words, the country of origin was to punish its national if he had not been punished abroad for the offence. If, however the country of origin undertook by implication not to punish the offender twice for the same offence, the country making the request should give a like undertaking. The principle he had mentioned should apply in both cases. If the country of origin punished its national, it must have a guarantee that the country making the request would not punish him a second time. It was for that reason that the Swiss delegation had submitted its amendment.

In support of his proposal, the Swiss delegate pointed out that the principle that the same offence must not be punished twice was embodied in Switzerland in a number of instruments, such as the Swiss Extradition Act of 1892 (Article 2) and the Extradition Treaty between Switzerland and Brazil. It was also recognised in a more general way in the draft Federal Penal Code, Article 3 of which went so far as to lay down that, when a national had been acquitted by a foreign court, there was no case against him as regards the Swiss courts. There was a similar provision in the French Code of Criminal Procedure (Article 7). The principle was not, therefore, a new one. The Swiss delegation submitted this amendment in order to make good what was unquestionably a deficiency. Certain countries might not be ready to go so far as Switzerland had done in implicitly recognising the equivalence, from the point of view of the punishment of crime, of the penal systems of the various countries; nevertheless, it would be useful to endorse that principle by adopting the Swiss amendment to Article 3.

M. DA MATTA (Portugal) thought Article 3 incomplete. He gathered that the Conference wished to retain as far as possible the wording of the corresponding provisions of earlier Conventions—namely, that for the Suppression of Counterfeiting Currency and the draft Convention for the Suppression of Terrorism. Those provisions—namely, Article 8 of the former Convention and Article 7 of the latter—did not, however, cover certain cases which were of great importance in the suppression of the illicit traffic in dangerous drugs.

The principle embodied in the Swiss amendment was not a new one. The Portuguese Penal Code also recognised it. That amendment alone, however, would not make good the deficiencies in Article 3 of the draft Convention. It laid down that the offender would not be prosecuted, or punished, for the same offence, "if he had already served a sentence which he received in his country of origin". That text did not cover the case of the offender having been acquitted by the court—a possibility which would have to be mentioned in Article 3.

M. KOUKAL (Czechoslovakia), while paying a tribute to the motives which had prompted the Swiss delegation, said that its amendment was open to certain legal objections. It prohibited the contracting parties from prosecuting or punishing the offender for the same act if he had already served the sentence which he had received in his country of origin. Its effect was thus to protect the offender. That idea was contrary to the purpose of the Convention, which was to ensure that offenders in connection with the illicit traffic in narcotic drugs should be punished. Moreover, it seemed illogical to protect these offenders, who were extremely dangerous persons.

Further, the principle that an offender must not be punished twice for the same act did not apply especially to the offences covered by the present draft Convention. In this matter, the contracting States should be left free to decide whether they should prosecute and punish the offenders anew, when the penalties inflicted upon them in another country were too slight as compared with those of their own national law. That had been the idea underlying the first paragraph of Article 3, which merely provided that States should be able to prosecute and punish their nationals for offences committed abroad, but did not in any way prohibit the contracting parties from prosecuting and punishing their own nationals. M. Koukal was not in favour, therefore, of adding the Swiss amendment. He proposed that the contracting parties should be allowed, in accordance with Article 12 of the revised draft Convention, to retain the right to prosecute and try offenders in conformity with the general rules of their domestic law.

Apart from those legal objections, there were certain cases which the Swiss amendment did not cover. The fact that it did not cover the case of an offender who had been acquitted had already been mentioned. There was also this point: would the protection given by the Swiss amendment against a second sentence for the same offence cover the case of an offender who, being a national of one country, had committed his offence in another country, and had taken refuge in a third? These were very delicate questions for which it would be difficult to find a solution.

M. LACHKEVITCH (Union of Soviet Socialist Republics) and M. HOTTA (Japan) agreed with the Czechoslovak delegate.

The PRESIDENT thought the moment had come for him to draw attention to certain aspects of the problem. He was not himself in favour of the Swiss amendment, though not for the same reasons as M. Koukal, since, on the whole, the President agreed with M. Gorgé's views. He only wondered whether it would be practicable, or even possible, to adopt this amendment.

The aim of Article 3 was the same as that of Article 8 of the Convention on Counterfeiting Currency. The principle "*non bis in idem*" did not arise; Article 3 was only intended to bind the contracting parties to prosecute their nationals who had committed abroad a crime referred to in Article 1 and had then returned to their own country. Presumably, the Swiss delegation had

made its proposal because, in Article 3, the words "without having been punished therefor" had been inserted—words which did not appear in the Convention on Counterfeiting Currency, the sole object of which he had just explained. As those words had been included, they might now be retained, but it seemed a pity not to have merely reproduced the text of Article 8 of the Convention on Counterfeiting Currency, for it would then have been clear that this particular question was not involved and that the rules of international criminal law applied.

Perhaps the Swiss delegate would say that, now he had raised this question, it should be settled. M. Gorgé's amendment, however, would not settle it. Rather, it suggested an argument *a contrario*. As the Portuguese delegate had said, an offender who had been prosecuted might be acquitted; but there was another and far more important question, which the Swiss amendment left open—as indeed it should be left, in the President's view. That amendment began "The offender will not be prosecuted or punished for the same offence . . .". The President considered it necessary to go much further, for when an offender had been punished (or acquitted) in the territory of one of the contracting parties, it should be impossible for him to be punished in the territory of another contracting party. As the Swiss amendment did not say that, the *a contrario* argument might be invoked; whereas if that amendment were not included, the question would remain open, as was at present the case in international criminal law.

There was a further difficulty. What was the "country of origin"? For instance, which would it be in the case of a Frenchman who had acquired Swiss nationality?

There was yet another difficulty. According to the Swiss amendment, the offender was not to be prosecuted or punished for the same offence "in the country making the application". The extradition laws of several countries, however—in particular, that of the Netherlands—laid down that extradition could not be granted unless criminal proceedings had already been instituted. Lastly, apart from the point raised by M. da Matta concerning acquittal, there was the question: What would happen in cases where the proceedings taken by the Public Prosecutor had been quashed?

In view of those objections, did not M. Gorgé think it preferable to withdraw his amendment? It would be better not to take a vote upon it, for to reject the amendment would also present difficulties. This question, which had not really been raised in Article 3, should be left altogether open, as had been the case before the preparation of the Convention.

Dr. SCHULTZ (Austria) supported the Czechoslovak delegate's observations, and associated himself with the comments of the President, which seemed to him conclusive.

M. CONTOUMAS (Greece) wished to make a proposal. He had listened with great interest to the points raised by the Czechoslovak delegate, and, like the President, he was certain that the question of applying the axiom "*non bis in idem*" did not fall within the scope of the article under discussion, and that it would be best to leave the question open. Since, as the President had said, the Swiss delegate probably would not have submitted his amendment had not the Committee of Experts inserted in Article 3 the words "without having been punished therefor", M. Contoumas proposed to omit those words. It would then be perfectly clear that it had not been intended to lay down in the Convention any rules on this subject. His proposal should be all the easier to accept in that it followed the precedent set by the Conventions on Counterfeiting Currency and on the Suppression of Terrorism, which had left the question entirely open.

M. GORRA (Egypt) did not wish to discuss the principle "*non bis in idem*", on which different opinions might be held. The penalties inflicted might be more or less severe in the various systems of law, and it was quite possible that offenders might cross a frontier in order to benefit by a less severe system.

M. Gorra wondered whether, if the amendment were accepted, Article 3 was really the right place for it, since this article only related to extradition and cases where the offence had not been punished. Either punishment would have been duly inflicted and there would then be no cause for extradition, or the country concerned would be ready to grant extradition, in which case the offence would not have been punished. Perhaps that particular phrase in Article 3 should be inserted rather in paragraph 3 of Article 1, where it was said that each of the acts specified above was to be considered as a distinct offence. It was in connection with that paragraph that the principle "*non bis in idem*" might be raised, and the meaning of the words "a distinct offence" defined. The Swiss amendment read: "The offender will not be prosecuted or punished for the same offence . . .". What became of the expression "a distinct offence"? Were the words "for the same offence" meant to cover the whole of the offence, or were they to be taken as referring to each specific act?

Colonel SHARMAN (Canada), on practical and not legal grounds, would be unable to vote for the Swiss amendment in its present form. The French and the English texts of the amendment did not agree, as the former read "s'il a subi la peine à laquelle il a été condamné", and the latter "if he has already served a sentence which he received". The French text spoke of the sentence which he received, while the English text seemed to speak of a sentence of any sort. For instance, if the person in question had already been sentenced to ten or fifteen years' imprisonment for some offence, no matter of what kind, it would follow from the English text that merely because he had already served a sentence he would be exempt from having this possible further one inflicted upon him.

M. GORGÉ (Switzerland) pointed out that he had introduced no foreign element into the article. It had been said and repeated that every word in the draft Convention had been carefully weighed and fully considered. In these circumstances, he was surprised that members of the

Committee of Experts should oppose an idea as being foreign to the Convention when it was specifically mentioned in Articles 3 and 4 of the draft. After studying that draft and interpreting it, first literally and then logically, M. Gorgé had drawn the inferences from it. If, under Article 3, a Swiss, for instance, committed an offence in Portugal and returned to Switzerland, Switzerland could not punish him if he had already been punished in Portugal. The Swiss delegate agreed to that, but only if Portugal undertook in turn not to punish a Swiss national who had already been punished in Switzerland. If the principle, *non bis in idem*, was applied in one direction in Article 3, it must also be applied in the other. The same argument applied to Article 4.

Like the Czechoslovak delegate, M. Gorgé did not view these offenders with sympathy. The Conference, however, was concerned not with sympathy but with legal principles, and it would be difficult to refute the logic of the above arguments. If the Swiss amendment were rejected, it would follow that the words "without having been punished therefor" would have to be removed from Articles 3 and 4. The principle *non bis in idem* must not be recognised in one instance and challenged in another. It would be advisable either to delete those words or to accept the qualification introduced in the Swiss proposal.

The Portuguese delegate had rightly pointed out that the Swiss amendment was incomplete. The Swiss delegation had modestly—and intentionally—confined its proposal to penalties, but would have no objection to mentioning acquittal.

Dr. Hoo Chi-Tsai (China) broached another question in relation to the same article, a question which arose in connection with the interpretation of paragraphs 1 and 2 of Article 3. It was a matter of direct concern to his country, and he would be glad to hear the views of the Conference on it.

As regards paragraph 1, the Chinese delegation noticed that, although the Convention imposed an obligation to punish severely the acts mentioned in Article 1, those acts would be punished far more severely in some countries than in others. As he had already said, the narcotic drugs situation in China was so serious that measures of exceptional severity had had to be taken. Those measures were provisional, however, as they would be withdrawn when the situation improved. Under Chinese law, some offences against the rules prohibiting manufactured drugs were punishable by death. If Article 3, paragraph 1, were strictly enforced, however, a Chinese who, in another country, committed an offence against that country's laws on the prohibition of manufactured drugs and then returned to China, would be punished as though he had committed the offence in China, that was to say, perhaps by death, while in the country in which he had committed the offence, the penalty might have been light.

Dr. Hoo wondered, therefore, whether it would be fair for China, which applied in its territories very severe penalties because of the narcotic drugs situation in that country, to punish so severely her nationals coming from abroad, when the narcotic drugs situation in the foreign country in which the offence was committed was not sufficiently grave to warrant a death sentence. He would, therefore, like to know what the Conference thought China should do in such a case.

As regards paragraph 2, he intended, during the discussion on Article 5, to make a general reservation similar to the reservation on the Convention on Counterfeiting Currency: China could not extradite foreigners enjoying extra-territorial jurisdiction. He would revert later to that point. It was said in paragraph 2: paragraph 1 "does not apply if, in a similar case, the extradition of a foreigner cannot be granted". That provision clearly applied to prescription, or other grounds for refusing extradition, and in that case there was no obligation to punish. In China, the foreigners in question could not be extradited in any event. In those circumstances, how should China interpret the relationship between paragraphs 1 and 2 of Article 3?

M. CONTOUMAS (Greece) raised a further question of interpretation. He would be glad to know what would be the result of the combined interpretation of Article 3, paragraph 1, and Article 1, sub-paragraph 2 (b), on cultivation. Under Article 3, paragraph 1, the contracting parties undertook to punish nationals for committing abroad the offences mentioned in Article 1, in the same way as if the offences had been committed on national territory. Suppose country A had no regulations on cultivation and had accordingly made no provisions for dealing with offences in that respect and, on the other hand, country B had had to regulate cultivation and had therefore taken steps for dealing with the corresponding offences; a national of country A committed, in country B, an offence against that country's regulations on cultivation, and then returned to country A. If Article 3, paragraph 1, were applied strictly, and country A were forced to punish that act in the same way as if it had been committed on its own territory, it would be in a very embarrassing situation.

The PRESIDENT pointed out that country A was under no obligation to go further than its own national legislation.

M. CONTOUMAS (Greece) wanted to be sure that the Conference's interpretation was the same as the President's—namely, that in that particular case, if there were no regulations on cultivation in a country and it had not provided for offences in that respect, the said country would assume no obligation on that score under Article 3, paragraph 1.

On a vote being taken on the Swiss amendment, it was rejected by 18 votes to 4.

M. CONTOUMAS (Greece) pointed out that, although he had not handed in an amendment, he had asked that the words "without having been punished therefor" be deleted.

M. TELLO (Mexico) said that, as the Swiss amendment had been rejected, he supported the Greek proposal.

Dr. SCHULTZ (Austria) also supported that proposal.

The PRESIDENT understood that M. Contoumas' intention was not to indicate in Article 3 that it was not necessary that the offender should not have been punished, but simply to leave the question outside the scope of the Convention.

M. CONTOUMAS (Greece) approved that explanation.

*Fifteen delegations having voted for the deletion of the words "without having been punished therefor" and 5 delegations for retaining them, the words in question were deleted.*

M. GORGÉ (Switzerland) thanked the Conference for having taken account of his objections.

M. DA MATTA (Portugal), referring to his amendment,<sup>1</sup> repeated that the Portuguese delegation considered that Article 3 of the revised draft Convention was not complete. The Conference had just rejected the Swiss amendment. The present amendment had been conceived in the same spirit: the Portuguese delegation wanted to fill in very large gaps in Article 3. That article concerned the case of nationals of contracting parties who, having committed an offence abroad, returned to their own country, on the presumption that the said country did not permit the extradition of nationals. Everyone agreed that no act mentioned in Article 1 should go unpunished; but it should be punished only once. From that point of view, M. da Matta regretted that he was quite unable to agree with the Czechoslovak delegate, who rejected the principle *non bis in idem* in international penal law. No doubt there were anomalies in theory and in substantive law, but the question was quite clear both in the most radical positive theories and in the old classical theory. Reference to the treaties on criminal law, as well as to the reports of international congresses on penal law, would reveal that hardly one discordant voice had ever been raised against it. It must be admitted that the principle in question was fundamental in international penal law.

Admitting that the offender must be punished, there were two possible courses; either he should be handed over to the authorities of his own country, or he should be prosecuted and punished in the territory of the State in which the offence had been committed, or in which he was found.

The object of the Portuguese amendment was to provide a solution for a case that might arise in practice. Suppose a country that did not recognise the principle of the extradition of nationals had an extradition treaty with another country, which likewise did not accept that principle. There were extradition treaties of that kind, for instance, between Portugal and the United Kingdom (1892) and Portugal and the United States of America (1908). If a British or American national committed an offence in connection with the manufacture of narcotic drugs in Portugal, for example, and returned to his country, Portugal would be unable to punish him because he was no longer in the country. Certainly, Article 563 of the Portuguese code on penal procedure, adopted in 1928, provided for the conviction of missing offenders, but it was clear that such a conviction would have no practical value. It was a fundamental rule of British and American penal law, however, that nationals who had committed offences abroad should not be punished. The following situation would therefore arise—the offender would never be punished. The whole idea of the Conference was quite the contrary; it was desired that in no case should the offender go unpunished. That was why the Portuguese delegation had moved its amendment.

*The discussion on the Portuguese amendment was adjourned to the next meeting.*

#### FIFTEENTH MEETING.

*Held on Wednesday, June 17th, 1936, at 10.30 a.m.*

*President: M. LIMBURG.*

#### 22. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>2</sup> (continuation).

##### ARTICLE 3 (continuation).

Dr. VAN ANGEREN (Netherlands) said the meaning of the Portuguese amendment<sup>1</sup> to Article 3 was not quite clear to him. If there was any necessity to introduce a paragraph such as that proposed by M. da Matta, he thought it should be inserted in Article 5 which related to extradition in general.

<sup>1</sup> See page 88.

<sup>2</sup> Document Conf. S.T.D. 2, Annex 3.



Article 5 did not distinguish between extradition of nationals and foreigners. On the other hand, if two countries had concluded an extradition treaty and both countries recognised the principle of the extradition of nationals, the treaty would no doubt provide for the reciprocal extradition of nationals. Since Article 5 provided that the offences enumerated in Articles<sup>1</sup>, sub-paragraph 2 (a), (c), (d) and (e), should be included as extradition crimes in any extradition treaty concluded, each of the two countries would be obliged to extradite its own nationals who had committed crimes in respect of narcotic drugs in the other country. In this respect, there was no difficulty.

If he was not mistaken, M. da Matta's idea was that a country which recognised the principle of the extradition of its nationals should be obliged by the Convention to extradite its nationals onesidedly, in spite of a reservation in the existing extradition treaties. Possibly, M. da Matta wished to fill the gap between Article 3 and Article 5 in cases where countries which recognised the principle of the extradition of nationals had not concluded extradition treaties in that sense, and he was therefore afraid that nationals would neither be punished in their own country nor extradited. If so, it would be better to insert in Article 3, after the words "where the principle of extradition is not recognised", an addition to the effect that the countries in question actually applied that principle. He was afraid that the amendment, if accepted, would give rise to confusion in its present form.

Mr. Dowson (United Kingdom), before discussing the amendment, wished to refer to the delay which had taken place in the discussion of the articles. There was a general feeling in the Conference that the work should proceed more quickly. He would strongly appeal to delegates to assist in speeding up the work by not putting forward or discussing at length amendments on points of drafting.

With regard to Article 3, he agreed with Dr. van Angeren. The Portuguese amendment was not appropriate to the subject of Article 3, which, like Article 4, dealt with prosecution and punishment, and not with extradition. Apart from that, however, the amendment required more consideration than the Conference could accord to it. It raised difficulties which Mr. Dowson deliberately refrained from examining, and he therefore appealed to the Portuguese delegate to withdraw the amendment. The proposal was not acceptable to countries which recognised the principle of extradition of nationals, since it raised difficulties regarding reciprocity.

Mr. WARD (United States of America), before proceeding to discuss the amendment, wished to correct the Portuguese delegate's statement that the United States did not extradite its nationals. The United States had always maintained that principle and had endeavoured to introduce it into extradition treaties with other countries, naturally on grounds of reciprocity.

One objection to the Portuguese amendment was that, if a country which did not itself recognise the extradition of nationals applied to the United States for the extradition of an American citizen, the request could not be granted in the absence of reciprocity. Mr. Ward considered that the countries which recognised the principle should retain the discretion granted them by the extradition treaties.

In the case of a treaty between two countries, both of which accepted the principle of the extradition of nationals, there was no need for the amendment in question.

M. DE REFFYE (France) agreed that the extradition of nationals could only take place subject to reciprocity.

France did not extradite her own nationals, but had adopted the principle of prosecuting and punishing French nationals who had committed a crime abroad. While there was therefore no direct reciprocity, there was no possibility of the offender remaining unpunished.

M. DA MATTA (Portugal) pointed out that the subject of the amendment was not covered by the draft Convention. Article 3 related to countries where the principle of extradition of nationals was not recognised, while the Portuguese amendment related to countries which recognised that principle. The case referred to in his amendment arose in practice, for instance, in Canada, the United Kingdom, the United States of America and other countries which extradited their own nationals. He would take as an example the extradition treaty between Portugal and the United States of America, which contained a reservation regarding the extradition of nationals since the United States accepted that principle and Portugal did not. The object of the amendment was not to allow any crime to go unpunished. If a national of the United States committed a crime in Portugal and returned to the United States, he could not be extradited: he could not be punished in Portugal since he had left the country: nor could he be punished in the United States, since the legislation of that country did not provide for the punishment of crimes committed abroad.

It might be argued that the reservation appearing in extradition treaties regarding the extradition of nationals brought all countries, for all practical purposes, under the provisions of Article 3. M. da Matta did not agree with that view, since Article 3 referred to countries which recognised the principle of the extradition of nationals.

He realised the difficulties in connection with his proposal. Those same difficulties had been encountered in drafting the Conventions on Counterfeiting Currency and Terrorism. He understood the desire to bring the present Convention into line with the two Conventions in question, but he did not attach much importance to the point, since the Conventions in question



were by no means perfect. If an opportunity arose to make the text of the present Convention more effective than that of the previous ones, that opportunity should be taken.

M. da Matta realised that his amendment called for lengthy study and, as he did not wish to prolong the discussion, he proposed to convert it into a recommendation for insertion in the Final Act.

M. GORRA (Egypt) thought there was a misunderstanding which could be overcome by replacing in Article 3, the words "In countries where the principle of extradition of nationals is not recognised" by the words "In countries where the principle of extradition of nationals is only recognised subject to conditions which render such extradition impossible".

M. GORGÉ (Switzerland), without wishing to criticise the original drafters of the Convention, observed that, the more the text was studied, the more defects were discovered. As he had pointed out at the previous meeting, it would be regrettable if the text did not make it more or less impossible to punish offenders twice for the same offence; but it would be still more regrettable, if it allowed them to go entirely unpunished.

The principle laid down by M. da Matta was sound. Article 3 related to countries which, like Switzerland, did not recognise the principle of the extradition of their nationals. It was perfectly equitable that countries which admitted that principle, but did not extradite their nationals in special cases, should be obliged to prosecute and punish them. The amendment could therefore be simplified by omitting the reference to extradition treaties. He suggested an addition to Article 3 to the effect that, if countries which admitted the principle of extradition of nationals refused extradition in particular cases, they should undertake to punish the offence in the same manner as if it had been committed in their territory.

M. TELLO (Mexico) wished to associate himself with the remarks by M. Gorra and M. Gorgé.

Mr. WARD (United States of America) agreed with the clear explanation given by the Portuguese delegate. He could not accept the view of the Egyptian delegate, as this involved difficulties for a country like the United States, which did not prosecute offenders in respect of offences committed abroad.

The Portuguese proposal would involve changes in legislation. If a country was anxious to accomplish the purpose of the Portuguese amendment, the natural way would be to agree to extradite its nationals. It was not advisable to make a special case for offences relating to narcotic drugs, but to apply the extradition to all offences without regard to their character.

M. TREBICKI (Poland) associated himself with M. Gorgé's proposal.

Mr. DOWSON (United Kingdom) agreed with Mr. Ward that the amendment submitted by the Swiss delegate was quite unacceptable for countries which did not prosecute for offences committed abroad. If that amendment were adopted, he would have to make a reservation on the subject. If countries like the United States and the United Kingdom, for whom the amendment was particularly intended, could not accept it, its effect would be lost.

Dr. SCHULTZ (Austria) thought it inevitable that there should be some gaps in such Conventions as that relating to Counterfeiting Currency and the Convention under discussion. In view of the difficulties to which the amendments under discussion were likely to give rise, he thought it advisable to reject them. The Conference on the Suppression of Counterfeiting Currency had encountered the same difficulties, and had decided to omit an amendment of this kind rather than to endanger the Convention.

For his part, he could accept the Portuguese amendment, but thought it advisable to omit it in the interest of the Convention as a whole.

M. DE REFFYE (France) had no objection to the Portuguese delegation's amendment, particularly as the underlying principle was in harmony with the French law and practice in matters of extradition. As the proposal, however, was unacceptable to the United Kingdom and the United States of America, it would seem to be preferable to adhere to the more widely acceptable draft text.

The PRESIDENT had at first imagined that the amendment proposed by the Swiss delegation would secure general support as being essentially an amplification of the first paragraph of the draft Article; but he now realised that the draft Article 3 left it to the discretion of a country to prosecute an offender or not, and was, therefore, more likely to be acceptable to such countries as the United Kingdom or the United States of America. It seemed unlikely, therefore, that the amendments proposed by the Portuguese and Swiss delegates would secure general support in the Conference.

M. DA MATTÁ (Portugal) reminded the Conference that the purpose of the Portuguese delegation's amendment was to fill an important gap in Article 3 of the draft Convention. He was prepared to agree that the text proposed by M. Gorgé was an improvement on his own delegation's amendment and he would, therefore, accept the alteration suggested by the Swiss delegation. As the idea embodied in the Portuguese and Swiss amendments had also

been supported by the delegates of Egypt and Mexico, it might be advisable to combine the central ideas of both amendments and thus give signatory States the alternative either of extraditing offenders or of prosecuting and punishing them. In view, however, of the objections raised by the delegates of the United Kingdom and the United States of America, it would clearly be impossible to secure general support, even for a combined text. He would, therefore, ask the President to ascertain the views of the Conference on the Swiss delegation's amendment. If that amendment were adopted, it could be re-drafted, while using the same phraseology, to form a recommendation instead of being made a substantive article of the draft Convention.

M. GORGÉ (Switzerland) wished to assure the delegates of the United Kingdom and the United States of America that, far from adopting an uncompromising attitude, he was anxious to take full account of the special circumstances of those countries in respect to extradition, and would not press for the proposals of Portugal or Switzerland to be embodied in an article of the draft Convention. Those delegates, on the other hand, would admit that the Conference was, at least, entitled to express its views on such an important matter of principle and on the desirability of filling the gap which had been found in the draft article. He suggested, therefore, that a recommendation should be inserted in the Final Act of the Conference, expressing the conviction that, though it might be inexpedient to remedy the defect observed by means of a formal article, the Conference was in favour of the idea underlying the Portuguese delegation's amendment and expressed the hope that countries such as the United Kingdom and the United States of America would make the least possible use of their right to refuse extradition in cases where it was usually refused.

Mr. DOWSON (United Kingdom), after thanking the delegate of Switzerland for the reasonable attitude he had shown, said he was prepared in principle to agree to a recommendation incorporating the idea contained in the Portuguese delegation's amendment. His previous remarks regarding a possible reservation by the United Kingdom had referred only to the Swiss proposal under which his Government would have to undertake to prosecute in the United Kingdom nationals who had committed offences abroad. As the Swiss delegate had generously recognised, the United Kingdom Government could not depart from the principle that British subjects were not, in general, liable to prosecution for offences committed abroad. He could not agree, therefore, to any proposal which involved acceptance of the Swiss delegation's amendment. The Portuguese delegate's proposal was a different matter; a recommendation on the lines proposed by him might possibly be adopted; but there was strong objection to embodying it in an article.

The PRESIDENT inferred that the Portuguese and Swiss delegations were prepared to withdraw their amendments to Article 3, if a recommendation on the lines of the Portuguese delegation's amendment were inserted in the Final Act.

M. GORGÉ (Switzerland), in rectification of the President's remarks, pointed out that the Conference should be asked to vote first on the Swiss delegation's amendment, on the understanding that, if adopted, it should be inserted, not as a formal article, but in the Final Act.

M. DA MATTA (Portugal) confirmed his agreement to the Portuguese proposal being merged in the amendment submitted by the Swiss delegation.

*On a show of hands, the amendment proposed by the Swiss delegation was defeated by 13 votes to 10.*

The PRESIDENT asked the Conference whether it agreed, in principle, to a recommendation on the lines of the original Portuguese amendment to Article 3 being drafted for insertion in the Final Act, the Portuguese delegation to submit the necessary text.

*The President's proposal was adopted.*

*Article 3 was adopted at a first reading.*

#### ARTICLE 4.

1. *Foreigners who have committed abroad any offence referred to in Article 1 without having been punished therefor, and who are in the territory of a country whose internal legislation recognises, as a general rule, the principle of the prosecution of offences committed abroad, shall be prosecuted and punished in the same way as if the offence had been committed in the said territory.*

2. *The obligation to take proceedings is subject to the condition that extradition has been requested and that the country to which application is made cannot hand over the person accused for some reason which has no connection with the offence.*

The PRESIDENT observed that amendments to this article had been tabled by the United Kingdom and French delegations.

*Amendment proposed by the United Kingdom Delegation.<sup>1</sup>*

"To insert after the word 'proceedings' in paragraph 2 the words: 'under the preceding paragraph', and to substitute for the words 'which has no connection', the words: 'not connected with'."

*Amendment proposed by the French Delegation.<sup>2</sup>*

"To substitute for Article 4, the following text:

" 'Foreigners who are on the territory of a High Contracting Party and who have committed abroad any of the acts set out in Article 1 should be punished as though the act had been committed in the territory of that Contracting Party, if the following conditions are realised—namely, that:

" (a) Extradition has been demanded and could not be granted for a reason independent of the act itself;

" (b) The law of the country of refuge, as a general rule, considers prosecution for offences committed abroad admissible;

" (c) The foreigner is a national of a country which, as a general rule, considers the prosecution of foreigners for offences committed abroad admissible.' "

M. DE REFFYE (France) explained that the French delegation's amendment was mainly designed to make the provisions of Article 4 clearer and give them a more logical presentation. Sub-paragraph (c), however, was a substantive addition. The wording of the French amendment corresponded to that of the similar provision in the draft Convention on Terrorism.

Mr. DOWSON (United Kingdom), having examined the text of the French delegation's amendment and found it acceptable, gave notice to withdraw the amendment tabled by the United Kingdom delegation.

The only substantial changes in the French amendment as compared with the draft article were the omission of the words "without having been punished therefor" and the addition of sub-paragraph (c).

At the discussion of the Committee of Experts in January last, his delegation had felt it important that no foreigner should be put on trial in any country for an offence which had not been committed or not taken effect in that country. That principle had been disregarded in the draft and the United Kingdom delegation had accordingly introduced an amendment in January last corresponding to that now put forward by the French delegation. The position of his delegation was therefore fully safeguarded.

M. CONTOUMAS (Greece) agreed that the text of the French amendment was clearer than that of the draft article and that the deletion of the expression "without having been punished therefor" was a natural sequel to the deletion of the same words in Article 3.

He was, however, unable to agree with Mr. Dowson as regards sub-paragraph (c). The idea which it embodied might certainly be valuable in a Convention on terrorism dealing with political offences, where reciprocity of treatment was desirable. It did not seem to be so necessary in the case of a Convention dealing with narcotic drugs offences, and, in his view, the addition of such a clause would weaken the effect of Article 4 as drafted by the experts.

M. Contoumas suggested, finally, that in sub-paragraph (b), the words "by foreigners" should be added at the end of the sub-paragraph, thus bringing it into line with sub-paragraph (c).

M. DA MATTA (Portugal) noted that the text of the French delegation's amendment was an exact reproduction of Article 8 of the draft Convention on Terrorism, and was much more explicitly worded than the original draft of the Committee of Experts in that it contained the additional clause formed by sub-paragraph (c). It was, at the same time, less complete in that the words "without having been punished therefor" in the experts' text had been omitted. His own preference would be for an article which would contain the first paragraph and sub-paragraphs (a) and (b) of the French delegation's amendment, but substituting for sub-paragraph (c) a clause reading somewhat as follows:

"The foreigner in question has not been prosecuted or punished for such offences."

In this way, Article 4 would be brought more into harmony with the spirit of the draft Convention. If sub-paragraph (c) as proposed by the French delegation were adopted, he feared that the effect would be merely platonic and offenders would enjoy almost complete immunity. He reminded the Conference, in this connection, of the unsatisfactory results of the 1930 Hague Conference on Nationality, due to the extremely vague and incomplete Convention which had been adopted.

The PRESIDENT noted that the United Kingdom amendment had been formally withdrawn, and, before adjourning the discussion, pointed out that sub-paragraph (c) of the French amendment would not cover the case of stateless persons who were not nationals of any country and might therefore evade punishment.

*The continuation of the discussion was adjourned to the next meeting.*

<sup>1</sup> Document Conf. S.T.D. 21 (a).

<sup>2</sup> Document Conf. S.T.D. 18 (a).

SIXTEENTH MEETING.

*Held on Wednesday, June 17th, 1936, at 3.30 p.m.*

*President: M. LIMBURG.*

**23. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).**

**ARTICLE 4 (continuation).**

Dr. SCHULTZ (Austria) thought the first paragraph and sub-paragraphs (a) and (b) of the French amendment<sup>2</sup> were an improvement on Article 4 of the revised draft Convention, and found them quite acceptable, in conjunction with the amendment proposed by M. Contoumas at the previous meeting.<sup>2</sup> But he was not of the same opinion as regards sub-paragraph (c). The effect of the latter was to divide offenders into two categories, not according to the nature and gravity of the offence, but according to whether they belonged or did not belong to a country which recognised, as a general rule, the principle of the prosecution of offences committed abroad by foreigners. That distinction would not produce satisfactory results. It was the Conference's business to see that all offenders committing acts contrary to the laws relating to the application of the Convention were prosecuted and punished, and there must be no restriction in that respect. But sub-paragraph (c) offered a premium to foreigners who were not nationals of a country recognising the general principle of the prosecution of offences committed abroad by foreigners, and, as the President had pointed out at the close of the previous meeting, it also offered a premium to stateless persons and persons who succeeded in hiding their nationality. Accordingly, Dr. Schultz proposed to omit sub-paragraph (c) and to retain the rest of the French amendment.

Mr. DOWSON (United Kingdom) pointed out that, in the English translation of the French amendment, the word "punished" should be replaced by "punishable", or some similar expression. Punishment was the affair of the courts. States could not undertake to punish offenders; they could only undertake to lay down the necessary provisions for that purpose.

Referring to M. Contoumas' observation at the previous meeting with regard to the expression "without having been punished therefor" in the first paragraph of Article 4 of the revised draft Convention, the omission of which was proposed by the French delegation, he was in favour of omitting the expression where it recurred in Article 3, because it was obvious that there was no intention of punishing an offender twice for the same act. The principle *non bis in idem* was unquestionably recognised in the United Kingdom.

Sub-paragraph (c) of the French amendment should be retained. The principles underlying the United Kingdom delegation's argument for the retention of that sub-paragraph had already been explained.<sup>2</sup>

In reply to the President's observation concerning stateless persons, he said that, if sub-paragraph (c) were retained, it was not absolutely necessary to insert a provision for that class of person. Possibly some provision might be inserted to the effect that "in the case of stateless persons, when the country in which the stateless person usually resides recognises, as a general rule, the principle of the prosecution of offences committed abroad by foreigners". But that was merely a suggestion.

M. KOUKAL (Czechoslovakia) pointed out that, while Article 3 bound the contracting States to punish their nationals for such offences committed abroad as were covered by the Convention, the French delegation's proposed text in place of Article 4 made the corresponding obligation in respect of foreigners subject to certain conditions. The first was that, extradition having been applied for, it was not granted for a reason independent of the offence itself (sub-paragraph (a)). There was no objection to that provision, which corresponded to Article 4, paragraph 2, of the revised draft Convention. The second condition was that the law of the country of refuge, as a general rule, considered prosecution for offences committed abroad admissible (sub-paragraph (b)). M. Koukal was prepared to accept that point, though he thought it was open to discussion. The third condition was that the foreigner in question must be a national of a country which, as a general rule, considered the prosecution of foreigners for offences committed abroad admissible (sub-paragraph (c)). To accept that condition would be to extend the category of offenders who might escape punishment. That M. Koukal did not wish to do, and he proposed therefore to omit sub-paragraph (c).

As regards the omission, in the French delegation's text, of the words "without having been punished therefor", which occurred in the draft of the Committee of Experts, he thought that the Conference having decided to omit that condition in Article 3, it would be illogical to retain it in Article 4.

<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>2</sup> See page 96.

M. Koukal saw no necessity for the insertion in Article 4 of any special provision concerning stateless persons. As stateless persons were foreigners in all countries, they would not be covered by sub-paragraph (c) of the French amendment; and the obligation assumed by the contracting States as regards foreigners in general would accordingly apply to them.

M. CONTOMAS (Greece) desired to remove a misunderstanding in connection with Mr. Dowson's observation concerning the Greek delegate's remark as to the deletion of the words "without having been punished therefor" in Article 3. The object of deleting those words was neither to settle the question of the *non bis in idem* rule, nor to do away with that rule. The aim was to leave the question of the application of the adage *non bis in idem* to be settled by the international law in force.

Mr. DOWSON (United Kingdom) thanked the Greek delegate for his explanation, which he accepted.

M. DE REFFYE (France) agreed with Mr. Dowson as to the impropriety of the expression "punished" in the introductory paragraph of the French amendment. There was no doubt that "prosecuted" or "punishable" would be more appropriate.

He shared the views of M. Contoumas and Mr. Dowson as to the effect of the omission of the words "without having been punished therefor".

As regards stateless persons, it would seem that the President's argument could not stand. Under the Convention on the International Status of Refugees, signed at Geneva in 1933, refugees had to be treated as though they were nationals of a country enjoying the benefit of the most-favoured-nation clause. The fact that the refugee's country of origin did not recognise the principle of reciprocity could not be brought up against him. A refugee could not, in fact, plead nationality. That being so, it followed that he must be treated like a national. For instance, if a refugee living in France committed an offence in another country against the laws on narcotic drugs, he must be prosecuted as though he were a national of a State having a reciprocity treaty with France.

M. DA MATTA (Portugal) thought that, before examining the question of stateless persons, it should be ascertained whether the Conference accepted sub-paragraph (c) of the French amendment. He had pointed out at the previous meeting that that paragraph would be dangerous because it would ensure impunity to a good many criminals.<sup>1</sup> If, however, it was accepted, the question of stateless persons should be discussed. There was one criterion with regard to this peculiar class of person which could be invoked at the present moment. He referred to the criterion which had been adopted in the Special Protocol relating to Statelessness, and the Protocol relating to a Case of Statelessness, signed at The Hague in 1930. Under the former, a stateless person had to be regarded as a national of the country in which he was to be found or of the country in which he was domiciled. There was therefore a criterion in international law which should be observed in the Convention under discussion.

The PRESIDENT explained that he had made his observations regarding stateless persons because he thought he should draw the Conference's attention to the gap in sub-paragraph (c) of the French amendment.

Replying to the comments to which his observations had given rise, he pointed out that, according to M. Contoumas, a stateless person should be regarded as a foreigner. That interpretation might hold good in civil law, and even in constitutional law, but not in penal law. In penal law, the offender had to be given the benefit of the doubt.

As regards M. de Reffye's contention that, under the 1933 Convention, refugees had to be given the same treatment as nationals of the most-favoured-nation, the President had two observations to make. In the first place, the 1933 Convention was concluded for the advantage of refugees, whereas, if the conception which it embodied was incorporated in the present Convention, it might operate to the disadvantage of refugees committing offences against the narcotic drug laws. Secondly, the 1933 Convention concerned refugees only, and it should not be forgotten that there were many stateless persons who were not refugees. There were many people who had lost their nationality because they had not opted for a particular country within a given time-limit under the Peace Treaties.

The President repeated that his observations at the previous meeting had been dictated solely by his duty as President to call attention to his doubts as to sub-paragraph (c) of the French amendment. He feared he must add that his doubts had not been removed.

Before putting the proposed amendment to the vote, he wished to put a point to the French delegation. Sub-paragraph (b) of the amendment postulated the following condition:

"The law of the country of refuge, as a general rule, considers prosecution for offences committed abroad admissible."

M. Contoumas had said that he understood that condition to refer to the prosecution of foreigners for offences committed abroad, and had urged that, if such were in fact its meaning, that point should be made clear.

<sup>1</sup> See page 96.

M. DE REFFYE (France) accepted M. Contoumas' proposal to insert the words " by foreigners " at the end of sub-paragraph (b) after the words " prosecution for offences committed abroad ".

M. CONTOUMAS (Greece) thanked M. de Reffye for having agreed to his suggestion. There was another drafting point he wished to raise in connection with the amendment. Since the phrase " shall be prosecuted and punished " had been adopted in Article 3, it would be well, for the sake of a uniform phraseology, to insert the words " prosecuted and " before the word " punished " in the introductory paragraph of the amendment.

M. GORGÉ (Switzerland) thought that the Greek delegate had been right to raise the point. Nevertheless, since the whole of Article 4 related to foreigners, there was no need to insert the words " by foreigners " in sub-paragraph (b). The words would only make the text unnecessarily heavy. The Committee of Experts had considered a similar proposal, but thought the addition useless.

The PRESIDENT was in favour of adding the words " by foreigners " at the end of sub-paragraph (b).

In sub-paragraph (c) of the French amendment, he thought the phrase " a country which, as a general rule, considers the prosecution of foreigners for offences committed abroad admissible " might be confusing. In certain countries, the general rule was to prosecute nationals for offences committed abroad, whereas it was only exceptionally that those countries prosecuted foreigners for offences committed abroad. In the Netherlands, for instance, where their nationals were prosecuted for offences committed abroad, foreigners were only prosecuted for offences committed abroad when those offences related to cases of piracy, conspiracy against the public safety or counterfeiting currency.

M. DE REFFYE (France) agreed to the insertion of the words " prosecuted and " in the introductory paragraph, it being understood that the penalties inflicted would be those laid down by the law of the country in which the judgment was pronounced, and that there would be no obligation to inflict the penalties laid down by the law of another country.

The PRESIDENT put the French amendment to the vote, paragraph by paragraph.

*The introductory paragraph, subject to the addition of the words " prosecuted and " before the word " punished ", and also sub-paragraph (a), were adopted by 22 votes, without opposition.*

*Sub-paragraph (b) with the addition at the end of the words " by foreigners " was adopted by 21 votes, without opposition.*

*Sub-paragraph (c) was rejected by 14 votes to 5.*

*The amended text of Article 4 was adopted at a first reading.*

#### ARTICLE 5.

1. Subject to the provisions of the last paragraph of this article, the offences referred to in groups (a), (c), (d) and (e) of paragraph 2 of Article 1 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty or reciprocity henceforward recognise the above-mentioned offences as cases of extradition as between themselves.

3. Extradition shall be granted in conformity with the law of the High Contracting Party to whom application is made and the treaties in force between the country asking for extradition and the country to whom the request is made.

4. The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if the said High Contracting Party or its proper tribunal considers that the offence of which the fugitive offender is accused or convicted is not sufficiently serious.

The PRESIDENT observed that amendments had been received from the delegations of the United States of America, the United Kingdom, France, Portugal and Switzerland.

*Amendment proposed by the United States Delegation<sup>1</sup> (Paragraph 4).*

" To amend paragraph 4 to read as follows :

" 4. The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if the offence of which the fugitive offender is accused or for which he has been convicted is not punishable in the territory in which the offence was committed by a term of imprisonment or other form of deprivation of liberty for a period of at least one year."

<sup>1</sup> Document Conf.S.T.D.7(a).

*Amendment proposed by the United Kingdom Delegation*<sup>1</sup> (Paragraph 3).

"To insert the word 'relevant' before the word 'law'. For the words 'the treaties in force between', substitute the words 'any treaties applicable to'. Insert the word 'to' before the words 'the country'.

"With these amendments, paragraph 3 will read as follows:

" 'Extradition shall be granted in conformity with the relevant law of the High Contracting Party to whom application is made and any treaties applicable to the country asking for extradition and to the country to whom the request is made.' "

*Amendment proposed by the French Delegation*<sup>2</sup> (Paragraph 3).

"To substitute for paragraph 3 the following text:

" 'Extradition shall be granted in conformity with the law of the country to which application is made.' "

*Amendment proposed by the Portuguese Delegation*<sup>3</sup> (Whole Article).

"To replace Article 5 by the following text:

" 'The offences referred to in Article 1 shall be included as extraditable crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.

" 'The High Contracting Parties who do not make extradition conditional on the existence of a treaty or reciprocity, henceforward recognise the offences referred to in Article 1 as cases of extradition as between themselves.

" 'Extradition shall be granted in conformity with the law of the country to which application is made.' "

*Amendment proposed by the Swiss Delegation*<sup>4</sup> (Additional Paragraph).

"To add a paragraph to read as follows:

" 'If extradition is refused for one of the grounds set out in Article 4, paragraph 2, or paragraph 4 of the present article, the offender shall be prosecuted subject to the conditions laid down in Article 4.' "

M. GORGÉ (Switzerland) had no objection of principle to the text of Article 5, but thought its present form too complicated and in some respects defective. It would be better, in his view, to keep to the wording of Article 9 of the draft Convention for the Punishment of Terrorism, the first paragraph of which expressed the same idea much more clearly. It seemed dangerous to say that the offences referred to should be "included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties". That was pushing the fiction too far. It would be better to say, as in the first paragraph of Article 9 of the draft Convention for the Punishment of Terrorism: "The acts set out . . . shall be deemed to be included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded between any of the High Contracting Parties".

Again in the French text, the words "*chacune des Hautes Parties contractantes s'engage à considérer les actes visés*" were useless. It would be better to keep to Article 9 of the draft Convention for the Prevention and Punishment of Terrorism, and merely say "*les faits prévus aux articles . . . sont de plein droit compris*".

Lastly, the sentence would read more easily, if the words "Subject to the provisions of the last paragraph of this article" were omitted. The Convention formed a whole, and each of its articles must be interpreted in conjunction with the other articles.

M. DA MATTA (Portugal) agreed with M. Gorgé's proposal, which was on the same lines as the amendment of the Portuguese delegation. The latter proposed that Article 5 should be replaced by the text of the corresponding articles of the Convention for the Suppression of Counterfeiting Currency (Article 10) and the draft Convention for the Punishment of Terrorism (Article 9), which expressed the same idea more clearly. He proposed therefore that his amendment be adopted.

M. da Matta also agreed with various drafting points the Swiss delegate had raised. He deprecated specific references to particular paragraphs of preceding articles. The usual practice was to refer to the whole article, except in the case of articles containing a very large number of paragraphs, it being understood that the reference was only to the relevant passages of the article in question.

The PRESIDENT noted that the Portuguese amendment covered the whole of Article 5. As various amendments had been submitted in connection with the other paragraphs of that article, these should be discussed first.

<sup>1</sup> Document Conf. S.T.D. 21 (a).

<sup>2</sup> Document Conf. S.T.D. 18 (a).

<sup>3</sup> Document Conf. S.T.D. 17 (b).

<sup>4</sup> Document Conf. S.T.D. 23 (b).



M. DE REFFYE (France), said that the amendment proposed by the French delegation was merely one of drafting. It was intended to show that the provisions of paragraph 3 referred both to domestic laws and existing treaties. It had the two-fold advantage of being short and reproducing the text adopted in the Convention on Counterfeiting Currency.

The PRESIDENT observed that M. de Reffye's amendment was drafted in the same terms as paragraph 3 of the Portuguese amendment.

Mr. DOWSON (United Kingdom) announced that the United Kingdom delegation withdrew its amendment in favour of the French amendment. From the explanations which the French delegate had just given, to the effect that the French amendment was only a drafting amendment and not an amendment of substance, it was clear that the article contemplated that the granting of extradition would continue to depend on treaties in the case of those countries whose law required the existence of a treaty.

Mr. WARD (United States of America) said that the United States delegation entirely concurred with the Portuguese amendment. If the latter were adopted by the Conference, the United States amendment would be withdrawn. For the information of the Conference and of certain delegations in particular whom that amendment had alarmed, the United States delegation wished to say that it had never claimed that its proposal was a perfect solution of the difficulties raised by paragraph 4 of Article 5. It merely thought its text preferable to that of the experts, which seemed to nullify the effect of the article as a whole.

M. GORGÉ (Switzerland) recalled that the Swiss delegation proposed to add a fifth paragraph to Article 5. It desired to amend the text it had submitted by omitting the reference to "Article 4, paragraph 2", so that it now referred only to paragraph 4 of Article 5.

The Conference would perhaps have noted that it was part of the policy of the Swiss delegation to supply the omissions in the draft Convention. That policy did not seem to be altogether to the liking of certain delegations. Personally, M. Gorgé had not many illusions as to the fate of his amendment. He did not withdraw it for the simple reason that, in the light of past experience, he was speculating to a certain extent on the spirit of contradiction by which the Conference seemed to be animated. On the previous day, he had contended for the principle *non bis in idem*, and certain delegations—the Czechoslovak and Austrian delegations would certainly not deny it—had hinted that he was championing unattractive and dangerous individuals who would only be getting their deserts if they were punished more than once for the same offence. On the following morning, he had expressed a simple hope that those same dangerous individuals would be punished, wherever they might happen to be; and to his stupefaction he found that the Czechoslovak and Austrian delegations were not prepared to agree. In those circumstances, M. Gorgé was in no position to forecast the decision the Conference would take. He pressed his amendment in order to satisfy his own logical conscience: but, if it gave rise to objections of any kind, the Conference might take it as withdrawn.

Moreover, it was obvious that, if the Conference accepted the Portuguese amendment, which made no reference at all to paragraph 4, the Swiss amendment would fall to the ground automatically.

The PRESIDENT observed that the Conference had now come to rather a curious pass. The United Kingdom amendment had been withdrawn; the French amendment was covered by one of the paragraphs of the Portuguese amendment; the United States amendment would be withdrawn, if the Portuguese amendment were accepted; lastly, the Swiss amendment would be withdrawn, if the Portuguese amendment were accepted, or if the former gave rise to objections. As the Conference had just heard, the additional text proposed by the Swiss delegation was now amended by the omission of the reference to "Article 4, paragraph 2".

With regard to the Portuguese amendment, the President drew the Conference's attention to the fact that, although it was a drafting amendment, it modified Article 5 in two respects. In the first place, while the draft Convention in its enumeration of the offences specified in Article 1 referred only to those specified in sub-paragraphs (a), (c), (d), and (e), omitting those specified in (b), the Portuguese amendment included them all. In the second place, the provision in paragraph 4 of Article 5 of the draft Convention, allowing the country applied to the right to refuse extradition in cases where it considered the offence "not sufficiently serious", was not to be found in the Portuguese amendment.

M. CONTOUMAS (Greece) wished to get one specific point clear. On more than one occasion, he had been taken to task by the Swiss delegate, who seemed to regard him as a father denying his own child. Incidentally, the Swiss delegate had referred to him as Chairman of the Drafting Committee of the Committee of Experts. M. Contoumas had never been Chairman of the Drafting Committee. He added that, just as the forty members of the Conference were not all in agreement on all points, so the twenty members of the Committee of Experts had not been able to agree in every respect. They had, nevertheless, succeeded in evolving a draft Convention, just as the Conference would itself succeed in doing. It was obvious, however, that if, after the adoption of a particular text, the delegates to the Conference had the opportunity, a day or two later, to reopen the discussion, each delegate would inevitably endeavour once more to defend the point of view he had previously waived in favour of that of the majority of the Conference.

M. Contoumas found himself—in common no doubt with all the other members of the Committee of Experts—in the position of not entirely agreeing on all points with the draft Convention under discussion. It was only natural, therefore, that, in the Conference, he should endeavour to introduce improvements. He could assure the Swiss delegate that he was not in the least ashamed to make that admission.

With regard to the amendments to Article 5, he entirely agreed with M. Gorgé and M. da Matta that the texts of the Conventions on Counterfeiting Currency and Terrorism were distinctly superior to that of the present draft, since they were both clearer and simpler. He had been particularly struck by the superiority of the former on re-reading the paragraph of Article 5 of the draft Convention and comparing it with the corresponding passages in the other two Conventions. He was therefore prepared to agree that the present wording should be replaced by the first section of the other two Conventions, provided there was no reference to paragraph 2 of Article 1 as a whole. He made that condition because he did not think the first paragraph of Article 5 should be interpreted as covering the cases of cultivation and production. That was the experts' view, and that was why they specifically enumerated sub-paragraphs (a), (c), (d) and (e) of paragraph 2 of Article 1, omitting sub-paragraph (b).

The Greek delegation agreed with the French and Portuguese amendments to paragraph 3. The insertion in the experts' draft of the words "and the Treaties in force between the country asking for extradition and the country to whom the request is made" was superfluous, because the law of the country applied to included the treaties in question.

Finally, the Greek delegation did not see any reason why paragraph 4 should not be omitted, as proposed in the Portuguese amendment.

Dr. SCHULTZ (Austria) said the Portuguese amendment fell into two parts—namely (1) the provisions contained in the three paragraphs of the amendment, and (2) the proposal to omit paragraph 4.

As to the first part, the Portuguese proposal could be accepted by the Austrian delegation, provided it was made clear in some way that the offences referred to in sub-paragraph (b) of Article 1, paragraph 2, were not to be treated as extraditable. Moreover, the Portuguese text was shorter and corresponded to that of the Convention on Counterfeiting Currency.

As to the second part, the Austrian Government attached great importance to paragraph 4 of Article 5. All those who had taken part in the preparation of the draft Convention would remember that it was always intended to draw a distinction between serious and less serious cases. Reference to the offences specified in sub-paragraph (a) of Article 1, paragraph 2, was enough to show the existence of different degrees in the seriousness of the offences. The possession of a very small quantity of narcotic drugs was quite a different thing from being in possession of 5 kilogrammes of heroin. The Austrian Government had always insisted upon the importance of drawing that distinction. It had not been entirely successful in its contentions; but at least the force of its objection had been recognised, and the experts had evolved the present wording as a means of meeting the Austrian point of view. The Austrian delegation urged the retention of that wording as a guarantee of elasticity in the matter of extradition.

The Austrian delegation fully appreciated the excellent intentions on which the Swiss amendment was based: but the facts must be faced. The Swiss amendment began with the words: "If extradition is refused." In what cases was extradition refused? It was refused in cases of a less serious kind; and, in such cases, the country in which the offender happened to be was obliged itself to institute proceedings. If the Austrian authorities were required to conduct the preliminary investigation of a minor offence committed in China, how could they possibly collect the witnesses—in a word, carry out the provisions of the Convention? It was clear that, in such cases, the provisions proposed would not prove very successful. In theory, the Swiss amendment was seductive; but, in practice, it was of doubtful value.

In reply to certain observations of the Swiss delegate, Dr. Schultz could assure the latter that he always endeavoured conscientiously to do his duty: but it might be that a particular point of view gave rise to doubts. The Conference ought not, in his view, to lose sight of the fundamental object of the present draft Convention. That object was not to lay down general rules with wide applications like the rules of criminal law or the law of extradition. The Conference should proceed warily, and should refrain from embodying in the Convention, or even in the Final Act, principles which, he maintained, required more careful study.

Mr. HARDY (India) said he would endeavour to be as brief as possible in order to allay the Portuguese delegate's anxiety in regard to the slowness with which the discussion was proceeding.

He felt that one of the most important points of the Portuguese amendment was the proposal to include the offences specified in sub-paragraph (b) of Article 1, paragraph 2, among the number of extraditable offences. When Article 5 had come up for discussion in the Committee of Experts, of which he had himself been a member, it had at first been proposed that all the offences specified in Article 1 should be treated as extraditable. It had been on his own suggestion that the offences specified in sub-paragraph (b) were excepted. He had pointed out that the original proposal would place the courts of the country applied to in an almost impossible position, because they could not be expected to be acquainted with the details of the different national laws in the matter of cultivation, gathering, etc.

The Swiss amendment would compel a country which refused extradition to take proceedings against the offender. That implied recognition by the country in question of the principle of proceedings for offences committed abroad. The Swiss amendment could only apply therefore to countries which recognised that principle, and not to others which did not. But there was

no reservation to that effect in the text of the Swiss amendment. On those grounds, the Indian delegation was obliged to oppose the Swiss amendment. That meant—if he understood M. Gorgé aright—the withdrawal of the amendment.

Dr. VAN ANGEREN (Netherlands) thought that the result of the amendments of the United States and Portuguese delegations would be to do away with the "safety valve" which paragraph 4 of Article 5 provided. It was true that the United States amendment replaced the condition embodied in paragraph 4 by another; but the latter condition was not so satisfactory. The criterion by which applications for extradition would be judged would not be the seriousness of the case, but certain novel considerations, the notion of which was alien to Netherlands law. There was no comparison with the clauses of the Convention on Counterfeiting Currency, because the crime committed by the counterfeiter was always serious. The position in the case of drugs was different. An offence against the drug regulations—even an offence deliberately committed—might be relatively harmless and such as to call for no more serious penalties than a police fine or the like. The Austrian delegate had given an example of such a case. It was very likely impossible to lay down a definite dividing line; but, in any case, the possibility of refusing extradition for such minor cases should be maintained.

Again, no illusions should be entertained with regard to the length of the extradition procedure. In the simplest cases—for instance, when an offender had to be extradited to a neighbouring country—the procedure might be fairly rapid; but in a case, for example, of extradition from Japan to the Netherlands, there had to be added to the duration of the extradition proceedings the time required for transporting the offender and the time during which the accused would be in custody until his case was tried. During all that time, the individual would be a prisoner. In ordinary circumstances, no doubt, he would be able to claim judicial assistance; but in drug cases there was considerable difficulty in giving judicial assistance.

On all those grounds, the Netherlands delegation felt that extradition should not be compulsory except in definitely serious cases; and it appealed to the Conference accordingly not to accept the proposal for the omission of paragraph 4.

M. KOUKAL (Czechoslovakia) thought that the most important point of the Portuguese amendment was its third paragraph. There could be little doubt that the concept "law of the country applied to" covered not only national sovereign law but also the law deriving from treaties. M. Koukal had asked whether in M. da Matta's view, the expression "law of the country applied to" referred, not only to the procedural law of extradition, but also to the conditions of the substantive law of extradition as defined either by the national law in question or by the law deriving from treaties. M. da Matta had replied to him in the affirmative. Consultation of various extradition treaties showed that, in most cases, they contained no provision regarding procedure and only laid down substantive conditions. If that was the true meaning of the third paragraph of the Portuguese amendment, M. Koukal thought all the misgivings of the Austrian and Netherlands delegates should be allayed, and that there need be no difficulty in accepting the Portuguese amendment.

The PRESIDENT observed that certain delegations were in favour of maintaining in the first paragraph of Article 5 the specific reference to sub-paragraphs (a), (c), (d) and (e) of Article 1, paragraph 2, whereas the Portuguese amendment referred to the offences specified in Article 1 in general without explicitly excluding the offences specified in sub-paragraph (b). He suggested that those delegations which wished to maintain the specific reference to sub-paragraphs (a), (c), (d) and (e) should submit a sub-amendment to the Portuguese amendment—namely, to insert in the first paragraph of the latter, after the words "Article 1", the words "paragraph 2 (a), (c), (d) and (e)". If the Conference voted for the Portuguese amendment, the vote would not be taken to mean the replacement of the whole of Article 5 of the draft Convention by the three paragraphs of the Portuguese amendment, but merely the replacement of paragraphs 1, 2 and 3 of the draft by the three paragraphs of the Portuguese amendment. The Conference could afterwards proceed to take a decision in regard to paragraph 4 of the draft Convention. That would meet the wishes of delegations desiring both to keep paragraph 4 of the draft Convention and to accept the Portuguese text for the first three paragraphs.

If the Conference decided to maintain paragraph 4 of the draft Convention, it would then have to vote on the Swiss amendment. The President deprecated the withdrawal of the latter notwithstanding the objections which had been raised to it. The Austrian delegate had argued that, if an offence were committed in a very distant country, extradition was impracticable. The President thought the Austrian delegate had overlooked the fact that that reference was not, and could not be, to such a case. The Indian delegate seemed to be under the same misconception. Paragraph 4 of the draft Convention implied that the criminal was still in the territory of the country applied to, and that the police authorities of the latter were in a position to apprehend him. The country in question would be able to refuse extradition if it considered the offence not sufficiently serious. That was the eventuality to which the Swiss amendment related. The Swiss proposal was that, in such a case, the country harbouring the offender and refusing extradition should be obliged to institute proceedings against him.

Dr. Hoo Chi-Tsai (China) informed the President that the Chinese delegation desired to make a reservation quite unconnected with the amendments under discussion in regard to Article 5. Was the present the proper time to make the reservation in question, or should he do so later?

The CHAIRMAN replied that the Chinese delegate could make his reservation at the beginning of the following meeting.

Mr. DOWSON (United Kingdom) understood that the Portuguese delegation did not intend to include the offences specified in sub-paragraph (b) of Article 1, paragraph 2, in the list of extraditable offences. That being so, it would be better to make the position perfectly clear in the text. He understood that the Portuguese delegation was prepared to accept a suitable wording for the purpose.

As regards paragraph 4 of Article 5, the Swiss and Portuguese delegates were perhaps not fully informed as to the past history of that clause. Reference to document Conf. S.T.D.1<sup>1</sup> would show the numerous preparatory stages through which the clause had passed. A preliminary draft had first been submitted to Governments for their observations, and had then been re-examined by the Advisory Committee in the light of those observations. A second draft had then been sent to the Governments for observations; and finally the Committee of Experts had prepared a new text, in which they had endeavoured to harmonise the various Governmental comments. Both the successive texts submitted to the Governments contained the provision reserving to the authorities of the countries applied to the right to refuse extradition, if the offence did not seem to them sufficiently serious. The Governments had thus had two separate opportunities of indicating their views on that subject.

The only definite objection to paragraph 4 had come from the Greek Government, and the arguments of the latter had been put to the Conference once more by M. Contoumas. The reason why the majority of the experts had ultimately decided to retain the provision in question was that they did not feel justified in excluding it, after it had twice been submitted to Governments, and no objections other than that of the Greek Government had been raised.

Mr. Dowson himself had no very definite views as to the substance of the proposed paragraph: but it seemed obvious that there might be cases in which an obligation to extradite for an offence that was not very serious might prove very onerous to a country. It was desirable therefore to give the courts of the country concerned some discretion in the matter. It was on those grounds that the United Kingdom delegation had supported the text of paragraph 4.

He did not think there was any serious objection to the Swiss amendment; but it should be made perfectly clear that it applied only to countries bound by Article 4, and not to others. It was impossible to require a country to take proceedings for which there was no provision in its national law.

Lastly, the United Kingdom delegation approved the three paragraphs of the Portuguese amendment.

M. DA MATTA (Portugal) said that, by way of reply to the Austrian delegate's remarks, he need only draw attention to the Austrian Government's own observations on Article 5 of May 17th, 1934, one paragraph of which was to the following effect<sup>2</sup>:

"As regards the last sentence of Article 5, it would perhaps be preferable to find a formula authorising the contracting parties to fix by a general autonomous rule what is to be regarded as a sufficiently serious act, in place of the present text, which provides for the separate appreciation of each individual case."

It was obviously difficult, and perhaps impossible, to find such a formula, since the judgment of every case must necessarily be subjective. The Czechoslovak Government was quite right when, in its observations of January 24th, 1935, it concluded that:

"... the Czechoslovak authorities would endorse the legal objections raised by various Governments to the last paragraph of Article 5 'which introduces a factor of uncertainty, particularly in regard to extradition. They think it should be considered whether, in accordance with the Austrian Government's proposal, the concrete appreciation of the gravity of the offence *ad hoc* could not be more effectively replaced by distinguishing between the elements constituting the offences according to the gravity as already defined in Article 1.'"

These were very judicious remarks, and, in view of the great difficulty of finding the formula which the Austrian Government wanted, there was only one possible solution—namely, to delete the paragraph: that was the Portuguese delegation's proposal, though it did not intend to adopt an uncompromising attitude in the matter. It felt that it would be impossible to achieve complete agreement on such a formula, even if an effort were made to find it. It would nevertheless raise no objection to a recommendation in the sense desired, to be inserted the Final Act: on the other hand, it was convinced that the retention of Article 5, paragraph 4, of the draft Convention was very dangerous.

With regard to the Portuguese amendment, M. da Matta had two observations to make. In the first place, he would quote the reply made by the United Kingdom Government on April 29th, 1935:

"The words in the third paragraph of the article: 'and the treaties in force between the country asking for extradition and the country to whom the request is made' are superfluous and might well be omitted. In every case in which extradition is granted, it will of necessity be in accordance with treaties in force between the countries concerned."

<sup>1</sup> See Annex 2.

<sup>2</sup> Document Conf. S.T.D.1, Annex 2.

Secondly, he could only confirm the statements made by the Czechoslovak delegate as to the scope of the Portuguese amendment. It concerned both substantive and procedural law, and that was one of its advantages as compared with the text of the draft Convention.

It had been asked whether the first paragraph of the Portuguese amendment covered all the cases specified in Article 1, including sub-paragraph (b). That was not the case, so that the sense of the amendment was that indicated by the delegations of the United Kingdom, India and the United States of America. The necessary explanations could be embodied in the Final Act; but the Portuguese delegation would not object to an addition in the sense indicated to the first paragraph of Article 5 itself.

M. CONTOUMAS (Greece) asked if the Portuguese delegation would accept two changes in the wording of the first paragraph of its amendment—namely, (1) the replacement of the words "shall be included" by the words "shall be deemed to be included" (which was the wording of the corresponding passage in the Convention on Counterfeiting Currency) and (2) the omission in the same paragraph of the words "any of" before "High Contracting Parties".

M. DE REFFYE (France), thought it better to incorporate in the text of Article 5 itself the explanatory words with regard to the various paragraphs and sub-paragraphs of Article 1. He proposed accordingly to add the words "paragraphs 2 (a), (b), (c), (d) and (e)" after the words "the offences referred to in Article 1" in the first paragraph of the Portuguese amendment.

M. DA MATTA (Portugal) accepted the amendments proposed by M. Contoumas and M. de Reffye.

At the request of Dr. CHODZKO (Poland), the PRESIDENT read the text proposed by the Portuguese delegation, as amended, before putting it to the vote.

*The Portuguese amendment was adopted by 18 votes, no delegation voting against it.*

The PRESIDENT concluded that, in the light of the above vote, the United States amendment was withdrawn.

The President then put Article 5, paragraph 4, of the draft Convention to the vote.

*It was decided, by 13 votes to 4, to retain this paragraph.*

M. GORGÉ (Switzerland) stated that his amendment was withdrawn.

*Article 5, as a whole, was adopted, at a first reading.*

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## SEVENTEENTH MEETING.

*Held on Thursday, June 18th, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

### 24. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts (continuation).<sup>1</sup>

#### ARTICLE 5 (continuation).

Dr. CHODZKO (Poland) observed that, before Article 5 had been voted on the previous day, the text as amended had been read out, but no written text had been circulated. He had not been able to hear the text fully, but had voted for it out of deference to the President and relying on the Swiss and Portuguese delegates. He desired to make some observations in connection with his vote.

The Convention under discussion was of very great importance and would no doubt be subject to considerable criticism. In order to reduce the opportunities for such criticism, it was desirable to make the draft as perfect as possible. He thought this could only be done by distributing proposed amendments of any complicated articles before a vote was taken.

In the second place, it was customary, when drafting Conventions, to circulate the text agreed upon as soon as possible after it had been established. He hoped this custom would be followed in the present case.

A further point to which he would refer was the speed with which the work was carried out. Some delegates had expressed a desire that the work should be speeded up. He would, however, point out that the Committee of Experts, consisting of only twenty members, had worked on the text for a week. The present Conference consisted of some forty delegations, some of whom were considering the text for the first time. It was therefore natural that the discussion should be lengthy, and delegates were justified in requesting permission to speak. The fate of thousands of persons might depend upon the text at present being drafted, and it was therefore essential that the Conference should be able to carry on its work calmly, without being unduly hurried.

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<sup>1</sup> Document Conf.S.T.D.2, Annex 3.

Lastly, he would suggest that the meetings should not be extended beyond the hour already fixed by the President, in order that the officials of the Secretariat might not be overworked.

The PRESIDENT replied that it was his aim to proceed as quickly as possible, so long as the quality of the work did not suffer.

With regard to the vote on Article 5, he could assure the Polish delegate that the changes upon which a vote had been taken had been fully discussed by the Conference, or merely consisted of drafting amendments.

He would request the Secretariat to distribute the text voted as soon as possible, though he would point out that a number of articles was still being considered by the Committee of Jurists, and no final text existed.

With regard to the punctual closing of meetings, M. Chodzko's request would be taken into account, but it was not always possible to break off an important discussion for that purpose.

Dr. Hoo Chi-Tsai (China) said he had received instructions from his Government to make a general reservation regarding Article 5 similar to that made in respect of Article 10 of the Convention for the Suppression of Counterfeiting Currency. The reason was that at the present time the nationals of certain Powers in China enjoyed extra-territoriality, so that it was impossible for the Chinese authorities to grant their extradition. There were other foreigners who did not enjoy such rights, and it would be possible from a legal standpoint to extradite them. The Chinese Government, nevertheless, did not wish to show any discrimination between these two classes of foreigners, which would react in favour of the former. The Chinese Government therefore would not undertake to extradite any foreigners from China.

Dr. Hoo read the following reservation contained in the Protocol to the Convention for the Suppression of Counterfeiting Currency :

" Pending the negotiation for the abolition of consular jurisdiction which is still enjoyed by nationals of some Powers, the Chinese Government is unable to accept Article 10, which involves the general undertaking of a Government to grant extradition of a foreigner who is accused of counterfeiting currency in a third State."

He asked whether the Conference desired to insert a similar reservation in the Final Act of the present Convention or thought it sufficient to include his statement in the Minutes.

He also enquired whether Article 5, paragraph 3, did not cover this reservation, since it stated that extradition should be granted in conformity with the law of the contracting party to whom application was made. The expression "law of the High Contracting Party" was capable of a wide or of a narrow interpretation. If a wide interpretation were placed upon it, a country could lay down conditions for extradition or even refrain from authorising it. The question would thus be settled by paragraph 3 of Article 5 and the reservation would become unnecessary. He had understood from the discussion on the previous day that the Conference placed a narrow interpretation on that paragraph. That was not, however, in accordance with the interpretation placed upon the words "national law" in Article 1, paragraph 2 (b), since the Conference had decided that that article did not compel States to punish offences if they were not punishable under the national law. The same applied to the words "legal limits" in Article 1, paragraph 2 (c).

Since the same idea was expressed in Article 1 and in Article 5, the interpretation should be the same in each case. If a wide interpretation were not accepted for Article 5, the Conference should make that clear by inserting a suitable text in the Convention itself or possibly in the Final Act.

The PRESIDENT replied that, if the Chinese delegate desired to make a reservation, it would be much more convenient to do so in the Final Act of the Convention. If it were merely recorded in the proceedings of the Conference, it would be likely to escape attention.

He did not agree that the reservation in question was covered by the text of Article 5, paragraph 3. At any rate, the Chinese delegate would be well advised to make his reservation in express terms.

The President did not think that a parallel existed between Article 1, sub-paragraphs 2 (b) and (c), and Article 5. Paragraph 2 (b) dealt with substantive criminal law, and the text meant that, if the national law inflicted a punishment, the offender would, under the terms of the Convention, be punished from the international point of view. The same applied to sub-paragraph (c). The wording of Article 5 meant that extradition was subject to the law of the country applied to, and it was very doubtful whether that text covered the question of extra-territoriality.

M. KOUKAL (Czechoslovakia) could not entirely agree with the President. The only difference between Articles 1 and 5 was that the former related to the national law of all the contracting parties, while the latter related to the national law of certain countries—that was to say, those to whom an application was made for extradition. The notion of "national law" was narrower than that of "law", since the latter covered not only substantive law but also provisions regarding procedure. The model extradition treaties prepared by the Pan-American Conference at Montevideo in 1933 and by the Penal and Penitentiary Commission dealt with the conditions of substantive law. Article 5, paragraph 3, which had been adopted, established a very definite element which determined the obligation to extradite—that was to say, the law of the country applied to. Moreover, the Conference had also accepted paragraph 4, which, apart from national law, gave a possibility to the contracting party to decide whether the offence was one which called



for extradition. The addition of paragraph 4 had introduced an element of uncertainty to which he had taken objection at the time.

Dr. HOO CHI-Tsai (China) agreed to the explicit insertion of his reservation in the Protocol of the Convention.

ARTICLE I (*continuation*).

*Paragraph 2: Introductory Sub-paragraph (continuation).*

The PRESIDENT said he had now been able from the Minutes of the eleventh meeting to gather the exact purport of the Canadian delegate's proposal. The latter's speech read as follows :<sup>1</sup>

"Colonel SHARMAN (Canada) referred to the decision not to delete the words 'wilfully committed' from the introductory sub-paragraph of paragraph 2 of Article 1.

"Before a vote was taken, the President had ruled that the exclusion of those words would mean that persons acting in good faith would be punished for accidental illegal acts. That view was not in agreement with that of the Canadian legal adviser. The Conference had, however, voted immediately after the President had made this ruling and might well have desired, as Colonel Sharman did, that innocent people should not be punished.

"In the circumstances, therefore, he wished to give notice that he would raise the question at the second reading and would ask that the opinion of the Legal Section of the Secretariat be obtained on the point and circulated to members of the Conference before such second reading."

The suggestion was, therefore, that the Legal Section should be consulted as to the consequences of a decision formally adopted by the Conference, because a delegation's legal adviser took a different view of those consequences. With all respect, the President would submit that the generalisation of such a method of procedure would be most unfortunate. Moreover, the point of penal law at issue was extremely elementary. He would, therefore, ask the Canadian delegate not to press his suggestion.

Colonel SHARMAN (Canada) said he had not yet received the provisional Minutes in question and was, therefore, unable at the moment to say whether his proposal had been correctly reported. He did not deny that the question had been settled so far as the first reading was concerned. He had merely suggested that, as the President's ruling had been questioned by other legal authorities, it would be helpful to get an advisory opinion from the Legal Section. He would prefer to deal with the matter at the second reading, but urged that the advisory opinion in question should be circulated beforehand for the guidance of all concerned.

The PRESIDENT again stressed the extreme undesirability of maintaining the Canadian proposal, and suggested that the quotation read from the provisional Minutes ought to suffice to recall to Colonel Sharman the exact purport of his proposal.

Mr. WARD (United States of America) strongly supported the views of the Canadian delegate as to the need for a fuller discussion before finally deciding whether the words "if wilfully committed" should, or should not, be struck out of Article 1, paragraph 2. The American delegation attached great importance to the question, and the decision of the Conference to include or exclude those words would be a material factor in the determination of the attitude which the Government of the United States should adopt with respect to the Convention. The American delegation held that the inclusion of the words in question was not essential. Full effect could quite well be given to Article 1, even if the words "if wilfully committed" were deleted. On the other hand, their inclusion would either make it necessary to prove that an offence had been wilfully committed or would force national legislation to go beyond the provisions of the Convention. In such circumstances, as legal opinion differed so widely on the point, it would be unwise to deprive the Conference of the advice of the Legal Section.

He agreed with the President that the penal law question involved was very simple, but was unable to concur in the President's view that the article as drafted left Governments free to ignore the express condition of wilful intent stipulated in the article. If the offences enumerated in Article 1 were made conditional on wilful commission, that condition must be regarded as an essential element of the offences, and national legislatures could not ignore that condition without going beyond the express terms of the Convention. If the legislation of any country, in penalising the offences prescribed by the Convention, were dependent on the Convention for the validity of such legislation, any law which exceeded the scope of the Convention could be successfully attacked in appropriate judicial proceedings.

The argument that the position of countries like Canada and the United States was safeguarded by the existence of Article 12 was quite untenable. The power conferred by that article of defining offences in accordance "with the general rules of domestic law" did not entitle national legislation materially to change the definitions laid down in the Convention. On the other hand, the

<sup>1</sup> See page 73.



omission of the words "if wilfully committed" would give free play to the operation of Article 12, and national legislation could enact the exact provisions required.

The long experience of the Canadian and United States authorities showed conclusively that their efforts to combat narcotic drugs would be effectively obstructed if the words in question were retained in Article 1. He asked the Conference, therefore, to reflect seriously on the question raised by the Canadian delegation.

The PRESIDENT reminded members that, in view of the decision already adopted by the Conference, it was quite out of order to discuss whether or not the words "if wilfully committed" should be deleted from Article 1. The only point to be decided was whether the Canadian delegate's proposal should be approved.

M. DE REFFYE (France) deprecated wasting further time on the academic discussion of side-issues. It was urgent to press on with the adoption of a text which had been so exhaustively discussed and considered as the present draft Convention. He moved that the Canadian delegate's proposal be put to the vote.

M. TELLO (Mexico), in view of the fact that the Legal Section would have to take Article 12 also into consideration in giving its advisory opinion, drew attention to the fact that the French word "*qualifiés*" in Article 12 had been translated by "defined" in the English text.

Mr. WARD (United States of America) could not agree that his remarks were not germane to the subject under discussion; they were an exhaustive explanation of why he supported the Canadian delegate's proposal, and he must insist on their being given in full in the Minutes of the Conference.

The PRESIDENT maintained that, instead of confining himself to the point of procedure raised, the United States delegate had reopened the discussion on a phrase in Article 1.

M. GORRA (Egypt) agreed with the President that the matter was not one which could be appropriately referred to the Legal Section of the Secretariat. At the same time, as so much importance was attached by certain delegations to the omission of the phrase "if wilfully committed", it might save lengthy discussions at the second reading if the conflicting views held could be reconciled by securing an authoritative advisory opinion.

Colonel SHARMAN (Canada) pointed out that, to facilitate the discussion at the second reading, it was essential for him to have—either privately or, preferably, as a member of the Conference—the Legal Section's views on the consequences of omitting the words "if wilfully committed" in Article 1, paragraph 2.

Dr. SCHULTZ (Austria), while appreciating the motives behind the proposal, regretted that he could not endorse the suggestion made by Colonel Sharman. The Conference was a conference of experts on criminal law and could, therefore, take decisions on its own responsibility. It would be highly regrettable if the procedure advocated by the Canadian delegate became a general practice.

M. DE VASCONCELLOS (Portugal) was at a loss to understand why a Conference presided over by an eminent jurist and composed of distinguished legal authorities should need to consult any outside body. Moreover, the Conference had its own Legal Committee on which the Legal Section of the Secretariat could also be represented. He would have the strongest objections to the procedure suggested by the Canadian delegate.

The PRESIDENT declared the discussion closed and asked the Conference to vote on the Canadian delegate's proposal to ask the Legal Section of the Secretariat for an advisory opinion as to the consequences of an eventual decision to delete the words "if wilfully committed" in Article 1, paragraph 2, the connection of the words in question with Article 12 being at the same time borne in mind.

*A vote was taken by roll-call.*

*The following nine countries voted for the proposal:* Brazil, Canada, Greece, Irish Free State, Mexico, Union of Soviet Socialist Republics, United States of America, Uruguay and Venezuela.

*The following thirteen countries voted against the proposal:* Austria, United Kingdom, Czechoslovakia, France, Hungary, India, Japan, Liechtenstein, Netherlands, Norway, Poland, Portugal and Switzerland.

*The following seven countries abstained from voting:* Chile, China, Egypt, Roumania, Siam, Spain and Yugoslavia.

*The Canadian proposal was defeated by 13 votes to 9, with 7 abstentions.*

## EIGHTEENTH MEETING.

*Held on Thursday, June 18th, 1936, at 4 p.m.*

*President : M. LIMBURG.*

### 25. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts (continuation).<sup>1</sup>

#### ARTICLE 6.

*Each of the High Contracting Parties agrees to make the necessary legislative provision for the seizure and confiscation of the narcotic drugs in respect of which one of the offences specified in Article 1 has been committed, and any products or machinery, instruments and other articles which may be used in connection with the commission of any of these offences.*

The PRESIDENT observed that the Conference had before it two amendments to this article, one by the United States delegation and the other by the Japanese delegation.

#### *Amendment proposed by the United States Delegation.*<sup>2</sup>

“ To amend Article 6 to read :

“ Each of the High Contracting Parties agrees to make the necessary legislative provision for the seizure and confiscation of narcotic drugs and substances involved in a violation of its narcotic laws or regulations, and of any products or machinery, instruments and other articles which may be used in connection with the violation of said laws or regulations. It is agreed, however, that this article shall not impose any obligation on the High Contracting Party to provide for the confiscation of any property if the owner of such property had no knowledge and could not reasonably be chargeable with knowledge that the property was to be or was being used for a violation of the said laws or regulations. ”

#### *Amendment proposed by the Japanese Delegation.*<sup>3</sup>

“ To substitute for the word ‘ products ’ the words ‘ other drugs and substances ’. ”

M. HORRA (Japan) said that Japanese lawyers considered that the term “ products ” was too vague and that it might give rise to practical difficulties under Japanese law. Since Article 6 enumerated the machinery, instruments and other articles which might be used in connection with the commission of the offence, it would appear that the only other things which could be seized and confiscated were the other drugs and substances intended for the commission of the offence. The Japanese delegation therefore proposed that the word “ products ” should be struck out and the words “ other drugs and substances ” substituted.

Mr. WARD (United States of America) said the American delegation did not regard its amendment as legally necessary, but it thought it advisable to raise the question of the possible effects of the obligation imposed on the contracting parties by Article 6. The confiscation of objects found in the possession of persons convicted of offences against the drug laws might in practice give rise to injustice. Motor-cars, boats or other vehicles in which drugs were carried were often themselves stolen, borrowed or bought on credit and not completely paid for, and consequently did not belong to the offenders. It was not proper that Article 6 should require the seizure of objects used in the commission of the offence, where the lawful owner of some of those objects was completely ignorant that his property was being unlawfully used. Probably, adequate legal safeguard was afforded by Article 12 of the revised draft Convention; but the United States delegation thought it desirable to propose the addition to Article 6 of the clause indicated in the second sentence of its amendment.

No explanation was required in regard to the first part of the amendment, which was merely a redraft of Article 6 of the revised draft convention with formal changes.

Colonel SHARMAN (Canada) supported the American amendment. The case covered by the proposed addition also occurred in Canada. During the past eight or nine years, there had been about a dozen cases a year in which articles seized and confiscated, because they were found in the possession of persons who had committed offences against the drug laws, were the property

<sup>1</sup> Document Conf.S.T.D.2, Annex 3.

<sup>2</sup> Document Conf.S.T.D.7(a).

<sup>3</sup> Document Conf.S.T.D.13(b).

of persons innocent of any offence. Persons engaged in the illicit drug traffic often made use of motor-cars, boats, etc., borrowed, stolen or bought on credit by payment of a nominal first instalment, so that the absolute confiscation of such objects in all cases would prevent the lawful owners from recovering possession of their property.

The Canadian Drug Act made it possible to avoid confiscating the property of innocent parties in such cases. Article 21 of the Act laid down that any instrument which had been used in the manufacture of drugs or any object, motor-car, boat, aeroplane or other vehicle that had been used to carry drugs should be seized; but it added that they should be handed over to the Minister, who should decide as to their disposal. That being so, if, after consulting the Department concerned, the Minister was satisfied that the article seized was the property of an innocent party, he could restore it to its owner. In the contrary case, the confiscated property was sold for the benefit of the Treasury.

M. LATOUR (Brazil) entirely endorsed the principle underlying Article 6 of the revised draft Convention. A Bill containing a similar provision was in preparation, and would shortly be introduced by the Brazilian Government to Parliament. It might, however, be desirable to make a few alterations in the text drawn up by the Committee of Experts on the lines of the United States and Japanese amendments. He saw no objection to adopting those amendments, if the Drafting Committee or the Conference itself could put them into a more technical form.

With reference, however, to the United States amendment, which aimed at safeguarding the property of innocent parties when it had been used in the commission of the offence, M. Latour must point out that such a safeguard was already provided under the criminal law of most countries and by the remedies afforded by procedural law. Nevertheless, there was no reason why it should not be made clear in the Convention that the property of persons who could not be charged with being accessory to an offence against the drug laws should not be confiscated.

M. DA MATTA (Portugal) was in favour of the idea of the Japanese amendment, but could not accept the form in which it was expressed. He observed that, in the replies from Governments at the first and second consultations, the most various expressions, such as drugs, substances, machinery, utensils, receptacles, etc., had been used to define the objects that were to be seized and confiscated. A formula must therefore be found that would cover all such instruments and other articles. He therefore suggested that the latter part of Article 6 of the revised draft Convention beginning at "in respect of which one of the offences specified in Article 1 has been committed" should be amended to read as follows:

" . . . in respect of which one of the offences specified in Article 1 has been committed, and any material and instruments which may be used in connection with the commission of any of these offences."

He observed that the word "material" covered the other drugs and substances which the Japanese delegation wished to specify, and that the term "instruments" was to be taken in its widest sense—that of instruments for the commission of the crime—and would embrace everything that might have been used in its commission. That was, moreover, the term used in the Convention for the Suppression of Counterfeiting Currency.

The American amendment was, in the Portuguese delegation's view, merely a rearranged text of Article 6 of the revised draft Convention and was not too happily worded from the legal point of view. The second part of the amendment, providing that contracting States should not be compelled to confiscate the property of innocent persons, was superfluous, since Article 1, paragraph 2, stipulated that the acts mentioned should be punishable "if wilfully committed". The words "wilfully committed" would safeguard the property of innocent persons. The addition proposed in the American amendment confirmed the need for retaining the words which the American delegation wanted to omit in Article 1.

Mr. HARDY (India) viewed the principle underlying the American amendment sympathetically, but was unable to support the amendment, though not for the same reasons as M. da Matta.

At the beginning of the Conference,<sup>1</sup> he had asked whether the undertaking in Article 1 to make the necessary legislative provisions for punishing severely offences against the narcotic drug laws would curtail the power of the courts to inflict light penalties for slight offences. The Government of India was anxious to be clear on this point, because there were a great many local regulations in India for trivial breaches in respect of which only light penalties were ordinarily imposed. He asked whether stricter legislative provisions would have to be enacted because of the obligation assumed by the contracting parties under Article 1. No country was willing to restrict its right to leave the courts to fix the penalties; but the point was of special importance in India, because it was to a large extent the provincial administrations that were responsible for suppressing the illicit traffic.

<sup>1</sup> See page 16.

The President's initial interpretation would satisfy the Government of India : but after the discussion at the previous meeting, when the President had given another interpretation, fresh doubts had arisen in his mind as to the obligations devolving on the contracting States. Would they, or would they not, be obliged to enact legislative provisions increasing the penalties laid down in current legislation? Perhaps it would be simpler if he were to propose an addition to Article 12, making it clear that, when the Convention stipulated that States should enact legislative provisions, it was not restricting the power of the courts to inflict lighter penalties for mild offences.

M. GORGÉ (Switzerland) pointed out that the words " Each of the High Contracting Parties agrees to make the necessary legislative provision ", at the beginning of Article 6, were somewhat formal for so minor an issue as confiscation. He proposed their omission from Article 6, as had already been done in Article 5. It would be better simply to lay down the principle, and to say, for example :

" Any narcotic drugs as well as any substances and instruments intended for the commission of any of the offences dealt with in Article 1 shall be seized and confiscated."

That text would clearly serve to strengthen the principle, but that principle, which would have the advantage of clarity, would, however, only depend, in so far as the methods of application were concerned, upon the national laws.

M. Gorgé understood the United States delegation's desire to qualify the principle; but the wording of the United States amendment did not seem to him to be altogether satisfactory. The second part of it might leave a gap from the point of view of civil law, and there might be some doubt as to its legal effect. Consequently, the qualification, reasonable enough in itself, should be left to the domestic law of the contracting parties. A Convention such as the one under discussion should keep to main lines and not enter into too much detail, for detailed provisions were not usually assimilable in domestic law. It was clear that a motor-car found in the possession of an offender could not be confiscated if it had been stolen by the offender. It was better therefore not to introduce the addition proposed in the United States amendment, and M. Gorgé personally could not accept it.

The Japanese delegation would doubtless agree that its amendment was covered by M. da Matta's proposal.

Dr. CHODZKO (Poland) recalled that Article 6 had been discussed at great length in the Committee of Experts. Several members of the Committee, including himself, desired not only that the substances and instruments used for the commission of an offence should be confiscated, but also that the offender should be deprived of the means of resuming his activities after serving his sentence. They had therefore proposed that the property, capital, buildings, etc., of offenders should be confiscated. The Committee of Experts had not, however, adopted that point of view.

Dr. Chodzko would be glad of an explanation from the United States delegation before expressing an opinion as to the United States amendment. The first part of the amendment differed very little from the text of Article 6 of the revised draft Convention; but the second part seemed to weaken the first part. Furthermore, it was to be feared that the wording of the second part raised the question of intention. He would therefore be glad of further explanations from the United States delegation as to the scope of its amendment. As at present advised, the Polish delegation preferred the proposals of M. da Matta and M. Gorgé, but it would await explanations as to the meaning of the United States amendment before coming to a decision.

Mr. WARD (United States of America) replied that he had anticipated M. da Matta's objections when he said the United States delegation did not regard the adoption of its amendment as legally necessary for the reason that it was covered by Article 12. There might be some doubt, however, about the application in some countries of Article 6; and the United States delegation had thought it well to introduce its amendment as a practical safeguard for property used for the commission of an offence without the knowledge of the owner. M. da Matta, reverting to the omission of the words " if wilfully committed " in Article 1, had argued that the omission of those words would make punishment obligatory in all cases. The American delegation, as had already been said, was unable to concur in that interpretation.

In explaining the American amendment to Article 6, Mr. Ward had explicitly stated that the American delegation did not consider the amendment legally necessary. It was introduced to bring specifically to the notice of Governments the injustice of confiscating the property of persons who had no knowledge of the illegal use to which the property had been subject. Moreover, Article 1 related to individuals and should not be confused with Article 6, which related to inanimate objects. There was a distinct difference between punishing an individual for the commission of an offence which he had undoubtedly committed and confiscating property which had been used for a purpose of which the owner had no knowledge. Article 1 related to the offender in the former case. Article 6 related to the property in the latter case. The same principle did not apply to both cases. The question of intent or absence of intent was not involved in the seizure of the property referred to in Article 6. It was believed that all the delegations would appreciate

the desirability of inviting the attention of Governments to the question in order to save innocent property-owners the annoyance and possible injustice of having their property seized for an act for which they not only had no responsibility but of which they had no knowledge.

The text of the possible amendment referred to by the delegate of India would, of course, require consideration for the determination of the attitude of the American delegation toward the amended article and its effect on other articles of the Convention.

In reply to Dr. Chodzko, Mr. Ward explained that the object of the amendment was to prevent the confiscation of property used for the commission of an offence without the knowledge of the owner. The expressions used in the amendment were quite clear and were in general use in American legislation. The proposed addition was justified by the fact that in some cases the law imputed to the owner a knowledge of the offence committed with his property: for instance, when it was common knowledge that a building was used for illicit purposes, the owner could not plead ignorance.

M. Hotta (Japan) withdrew the Japanese amendment in favour of the Portuguese amendment, which was clearer.

In connection with the American amendment, M. Hotta recalled that the same question had been raised by the Japanese delegation at the Conference on Counterfeiting Currency, and it had been agreed that the word "instruments" in Article 11 of the Convention on Counterfeiting Currency (which corresponded to Article 6 of the present Convention) should be interpreted to mean "guilty material".

At that same Conference, the President had stated that, under Article 18 of the Convention on Counterfeiting Currency (corresponding to Article 12 of the present Convention), the punishment of offences fell within the scope of national legislation. In those circumstances, there was no need for the second part of the American amendment; and the Japanese delegation would therefore vote against it for the simple reason that it was superfluous.

Mr. Dowson (United Kingdom) agreed with M. Gorgé that the opening words of Article 6 might be regarded as unnecessary.

The Conference would remember how the text originally submitted to the Committee of Experts had been modified. Some of the experts had found the expression "shall be confiscated" too strong, and the article was softened to "each of the High Contracting Parties agrees to make the necessary legislative provision for the . . . confiscation . . .". As M. Gorgé had also pointed out, it was for the Conference to lay down principles, and for the States to put them into effect by means of legislation. No doubt the expression "liable to be confiscated" could be used, but that also would diminish the force of the expression, and he preferred M. Gorgé's text.

Mr. Dowson also agreed with M. Gorgé as to the United States proposal. He had much sympathy with Mr. Ward's attitude, but thought his suggestion was unnecessary and would only complicate the article. It was for the domestic law to save the courts from having to order the confiscation of, for example, a motor-car used for illicit purposes without the knowledge of its real owner.

M. Tello (Mexico) opposed the American amendment for exactly the same reasons as had led him to oppose the conception of "intention" in Article 1. In both cases, it was for the country concerned to define the offences as provided in Article 12. Psychologically, it was very bad tactics to give too much prominence to the two conceptions of intention and innocence.

Mr. Ward (United States of America) insisted that there was no incompatibility between the American delegation's proposal for the amendment of Article 6 and its proposal for the amendment of Article 1. The proposed amendment of Article 1 omitted all reference to the question of intent, and the American delegation had repeatedly stressed the view that the omission of the condition of wilful commission of the offences enumerated in Article 1 would facilitate the accomplishment of the purpose of the Convention. It was desirable to reiterate, therefore, what had been previously said, that the American delegation did not consider its amendment to Article 6 legally necessary but did regard it as practically desirable in the interests of innocent owners of confiscated property. In view of the attitude of the Conference, however, generally unfavourable to the proposal, the American delegation would not press for a vote on its proposal. It was prepared to accept the amendment proposed by the delegate of Switzerland, but suggested that the words, "shall be confiscated" be changed to read "shall be liable to be confiscated".<sup>1</sup>

M. Gorra (Egypt) did not propose to take up any definite position in the present discussion, but desired to clear up a point on which there might be some misunderstanding.

Everyone would agree that there was no need to take into consideration felonious intent in connection with the seizure of narcotic drugs themselves or instruments which had been unquestionably employed in connection with the illicit traffic. On the other hand, where the owner of accessory instruments—for example, instruments of transport—was of good faith, the point raised by the American delegation affected, not the confiscation of the actual narcotic drugs, which were evidence in themselves, but the confiscation of the instruments of transport.

<sup>1</sup> See document Conf.S.T.D.7(b).

M. Gorra was in a position to throw light on the matter, having had frequent experience in his own country as an advocate in cases relating to motor-cars or ships employed to transport smuggled goods. The question arose whether the instruments in question could be confiscated when the Government itself recognised the owner's good faith. Where the law stated that "instruments of transport *may* be confiscated", the courts took the line that they could only be confiscated if there was connivance on the part of the owner; if he was of good faith, the instruments of transport were restored to him. On the other hand, in the case of hashish, the law expressly stipulated that "instruments of transport shall be confiscated"; and the courts ordered confiscation accordingly, even where the owner was of good faith.

M. Gorra's attitude in the matter was based, in the main, on French legal practice, which confiscated the instrument of transport without regard to the intention of the owner in certain cases—for example, he believed, in Customs cases. If, therefore, the text relating to narcotic drugs stipulated that "instruments of transport shall be confiscated", the courts might treat confiscation as automatic, even where the owner was of good faith.

The PRESIDENT asked whether the United States delegation's amendment was withdrawn.

Mr. WARD (United States of America) replied that, after the explanations he had already given, it must be quite clear that the American delegation would not press for a vote on its proposal if the Conference was not prepared to accept it. The Swiss amendment would seem acceptable, if amended to read, "shall be liable to be confiscated". The American delegation would not press for one text in preference to the other. It left the decision to the Conference.

The PRESIDENT concluded that the American amendment was withdrawn. The Japanese amendment had also been withdrawn in favour of the Swiss and Portuguese amendment, which was the only amendment now before the Conference.

Mr. HARDY (India) pointed out that the United States amendment was only to be withdrawn if the Swiss amendment were amended to read "shall be liable to be confiscated".

The PRESIDENT said there was a slight difference between Mr. Hardy's interpretation of Mr. Ward's statement and his own interpretation. Mr. Hardy thought a change in the Swiss amendment was a fundamental condition of the withdrawal of the American proposal. The President understood that the American delegation had withdrawn its amendment in favour of the Swiss amendment, while at the same time suggesting the possibility of substituting the words "shall be liable to be confiscated" for "shall be confiscated". The substitution of the words in question was not, the President understood, a fundamental condition of the withdrawal of the United States amendment. He proposed to ask M. Gorgé whether he was prepared to modify his amendment in the sense indicated by the United States delegation.

The President had a few brief observations to offer on the question itself. In presence of so many draft texts and Government consultations, he had not felt it his duty to reopen a discussion on the subject of confiscation. But the discussion had taken place notwithstanding. In his opinion, the root of the trouble was that the discussion had referred to general confiscation, whereas the usual practice, with certain exceptions, was (as, for example, in the Netherlands Criminal Code) to confiscate only such objects and instruments as were the property of the convicted parties. However, as there was nothing to this effect in any of the various draft Conventions, he would not press the point further, except to point out that the principle was one which was laid down in several penal codes. Another principle embodied in a number of penal codes, in particular the Netherlands Criminal Code—though with exceptions—was the principle of optional confiscation. The courts could order confiscation, but only in exceptional cases were they bound to do so.

Nevertheless, the President did not wish to reopen a discussion on either of the two principles in question, since neither of them found a place in the Conventions with which the Conference was concerned. On the other hand, he would point out that Article 11 of the Convention on Counterfeiting Currency contained the same provision as the Swiss amendment.

What would be the position if that amendment were adopted? The President wished to reassure the United States delegation on the matter. One speaker had expressed the opinion that confiscation would be automatic. That seemed out of the question. Once the Convention was adopted, each country would have to take appropriate legislative action, for the Convention would have no effect of itself. Was it to be supposed that those responsible for drafting the appropriate legislation would stipulate that all the articles concerned must be confiscated? That was unthinkable, and owners whose motor-cars had been stolen and used for committing the offences to which Article 1 related could sleep tranquilly.

M. DELGORGE (Netherlands) did not want to reopen the discussion. He asked M. Gorgé to refer to the original draft Convention, which simply said<sup>1</sup> that "drugs and substances employed in illicit traffic shall be seized and confiscated". The draft submitted to the Governments for the second consultation went further:<sup>1</sup> "Drugs, substances and *articles employed* in illicit traffic . . ." In its observations of February 6th, 1935,<sup>1</sup> the Netherlands Government had criticised the new text, as liable to give rise to practical difficulties and to unfair confiscations.

<sup>1</sup> Document Conf.S.T.D.1, Annex 2.



It would therefore be better to amend M. Gorgé's proposal to read : " liable to be confiscated ". M. Delgorge hastened to add that English was not his mother tongue; and, if Mr. Dowson, who considered that a judge was not bound to confiscate in all cases, was prepared to accept M. Gorgé's wording " shall be confiscated " as satisfactory, M. Delgorge would support it. He merely wished to know whether with the wording " shall be confiscated " there would, or would not, be an obligation to confiscate. Incidentally, he noted that in the Convention on Counterfeiting Currency the words "*doivent être confisqués*" in French were translated " should be confiscated "—not " shall be confiscated ".

M. KOUKAL (Czechoslovakia) wanted to be sure of the significance of the Swiss amendment. He would like to know whether the wording implied that money derived from the punishable offences specified could be seized and confiscated. If an offender sold dangerous drugs, the drugs could be seized and confiscated; but could the money obtained from the transaction be confiscated also?

Mr. DOWSON (United Kingdom), in reply to M. Delgorge, said he had already explained that, of the alternatives " shall be confiscated " and " shall be liable to be confiscated ", the second expression was the weaker of the two. In his opinion, the words " shall be confiscated " implied the assumption by the contracting parties of an obligation, in principle, to provide for the confiscation of the articles concerned. But that would not preclude a State from providing in its legislation for exceptions in eventualities such as that referred to by the United States delegate. In Mr. Dowson's opinion, legislation of that kind would not constitute an infringement of the general principle embodied in M. Gorgé's draft. As had already been said, the present Conference was laying down principles to which it would be for the States to give legislative effect. He could not believe that a State legislating in the sense indicated could ever be accused of violating its undertakings under the Convention.

The Netherlands delegate had asked whether the English text should read " should be " or " shall be ". Again, the first expression was the weaker of the two. He could only repeat what he had already said in this connection.

M. DELGORGE (Netherlands) said that, in view of the explanations of the United Kingdom delegate, he was unable to accept the Swiss amendment in its present form. He could only support it if amended in the sense indicated. Take the case of a firm illicitly manufacturing narcotic drugs. It was clear that the products and instruments used to manufacture the drugs must be seized. But was it necessary to provide for the seizure of the building itself? That was inadmissible. The courts must be free to judge according to circumstances.

Mr. HARDY (India) strongly supported the Netherlands delegate. The authorities in India had had the same experience as the Netherlands authorities. Indian legislation on articles liable to be confiscated dated back to 1878 and perhaps even farther. It covered containers, vehicles, vessels, etc., and the expression used was " shall be liable to be confiscated ". It was felt that a stricter text would cause difficulties. If the steward of a steamship was caught in the act of transporting five grammes of cocaine on the vessel, would the vessel necessarily have to be confiscated? The Customs Administration in India had never considered that the rigour of the law could be carried to such a point as that. The enforcement of the law was within the limits of reason. If the Conference approved the Swiss amendment in its present form, it would be very difficult for him to convince his Government that the Convention did not entail amending legislation to make confiscation compulsory and not optional. He would much prefer the original text, and would only support the Swiss amendment if amended as indicated.

M. GORGÉ (Switzerland) had some hesitation in making any substantial change in his text, because the principle laid down in his amendment was in strict conformity with Article 11 of the Convention on Counterfeiting Currency. Seeing that it had been possible to go so far in so important a Convention as the latter, there was no reason for not going to the same length in another Convention, the purpose of which was to impose severe penalties for certain offences.

It had been pointed out that the Swiss amendment contained the words " shall be confiscated " ("*seront confisqués*"), whereas the Convention on Counterfeiting Currency said, " should be confiscated " ("*doivent être confisqués*"). There was no fundamental difference between the two expressions in French. It seemed, however, that the words "*doivent être confisqués*" were more peremptory, so that the Swiss amendment would slightly diminish the force of the text. On the other hand, the words " shall be liable to be confiscated " would considerably reduce the effectiveness of Article 6, which would then become optional and would merely serve as an indication to States of what they might do, whereas the whole idea was to impose on them a definite obligation. If the article were to be made merely optional, he would see no value in it and would prefer to omit it.

The Czechoslovak delegate had raised the interesting question whether profit obtained from an illicit transaction should be confiscated. The origin of the doubt seemed to lie in the use of the word " products " in the draft. In the Committee of Experts, " products " was explained to mean raw materials: but M. Koukal had thought it might be open to the interpretation " profits obtained ". The Japanese delegation had the same doubts, and had suggested substituting " other drugs and substances " for " products ". M. Gorgé did not think profits obtained from an illicit



transaction were covered by Article 6. However, as he had said before, and Mr. Dowson had just repeated, the Conference must lay down a general principle, and it would be for each State, acting in good faith, to embody that principle in its domestic legislation, with such modifications as it judged necessary. The fundamental reservation in Article 12 upholding the authority of domestic law in penal affairs should never be forgotten.

M. Gorgé therefore thought that the text of his amendment might stay as it was. However, in a spirit of conciliation, he was prepared to meet certain objections, and, in particular, the representations of the Czechoslovak delegate—although the suggestion he was about to make entailed a step backward as compared with the Convention on Counterfeiting Currency—by the addition at the beginning of his amendment of the words: "subject to the detailed procedure provided for, or to be provided for, under national law". That text would, he thought, give satisfaction to the delegates of the Netherlands and India, since it made a definite reservation as regards the modifications allowable under domestic law. It might of course be argued that the States would make so many modifications as to leave nothing of the principle, but the States must be presumed to act in good faith. The Conference was laying down a general compulsory principle; it would be open to the States to qualify the principle within limits, but not to eliminate it altogether.

M. DA MATTA (Portugal) said the Portuguese delegation would only vote for Article 6 in the form proposed by M. Gorgé. It had been pointed out that the Convention on Counterfeiting Currency contained the expression "should be confiscated" instead of "shall be confiscated". In M. da Matta's opinion, there was a shade of difference between the two expressions: the first seemed to be less imperative than the second. The words "should be confiscated" imposed a duty on the authorities; the words "shall be confiscated" laid down an arbitrary rule.

Moreover, the provision that the articles in question were liable to be confiscated would add nothing new, since the principle of seizure of the instruments with which a crime was committed was already a principle of penal law and embodied in many criminal codes.

Neither did M. Gorgé's last suggestion introduce anything new, since the reservation was plainly implicit in the amendment. Delegations should remember that the articles which they were drafting for the proposed Convention would be studied by jurists in the various countries, whose task it would be to embody them in domestic law; there was no need, therefore, to add to the Convention expressions which conveyed nothing new.

One delegation had referred to the possibility of confiscating buildings. Should the Conference take the view that reference should be made to such a possibility, the Portuguese delegation would have to make a reservation, as such a provision would be contrary to the principle underlying the Portuguese law.

The PRESIDENT asked M. Gorgé whether he desired his amendment to be put to the Conference with the qualifying addition he had just suggested.

M. GORGÉ (Switzerland) answered that he had already said he preferred his original text, and had only made his suggestion for the addition of the qualifying words as a gesture of conciliation. As his suggestion was opposed by the Portuguese delegation, he would leave his own text as it stood. The Conference would be at liberty to revert to the proposal, if necessary.

M. HOTTA (Japan) distinguished two distinct proposals in the Swiss amendment. There was, first, a drafting amendment to replace the words "products or machinery, instruments and other articles" by "substances and instruments". Secondly, there was a question of principle—the question already discussed of introducing a provision making confiscation compulsory. He would like the Conference to take a decision on those two points separately.

In reply to a question by the President, M. Hotta added that the Japanese delegation had withdrawn its amendment in favour of the Swiss amendment. It had first suggested the replacement of the word "products" by "other drugs and substances", but it preferred M. Gorgé's wording, "substances and instruments."

The PRESIDENT informed the Conference that, as the Czechoslovak delegation intended to submit a new amendment, the discussion would be adjourned to the next meeting.

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## NINETEENTH MEETING.

*Held on Saturday, June 20th, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

### 26. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE 6 (continuation).

The PRESIDENT recalled that, at the preceding meeting, the Conference had discussed amendments submitted by the United States, Japanese and Swiss delegations respectively.

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<sup>1</sup> Document Conf. S.T.D. 2, Annex 3.

With regard to the Swiss amendment, it had been pointed out by various speakers that the original text proposed would require adjustment to the different systems of national law. Accordingly, the Swiss delegation was prepared to precede the article by the following words: "Subject to the detailed procedure provided for or to be provided for under national law".

The Swiss amendment would therefore read as follows :<sup>1</sup>

"Subject to the detailed procedure provided for or to be provided for under national law, any narcotic drugs as well as any substances and instruments intended for the commission of any of the offences dealt with in Article 1 shall be seized and confiscated."

The United States amendment<sup>2</sup> proposed that the goods in question should be "liable to seizure and confiscation"—a phrase which, of course, rather weakened the text. The Japanese delegation was prepared to accept the Swiss amendment with or without the introductory phrase; for the moment, therefore, the Japanese amendment would be held over.

The Czechoslovak delegation had now submitted an amended text containing the words "any profits obtained through the commission of the offence". The text of Article 6 would therefore read as follows :<sup>3</sup>

"Any narcotic drugs, substances and instruments intended for the commission of any of the offences dealt with in Article 1, as well as any profits obtained through the commission of the offence, shall be seized and confiscated."

It seemed to the President that the proposed addition would complicate the matter. He understood the word "profits" to mean money—that was to say, a liquid asset which passed from hand to hand.

M. KOUKAL (Czechoslovakia) said the Brazilian delegation also supported his amendment.

On several occasions the draft submitted by the Committee of Experts had been severely criticised on the ground that it did not provide effectively enough for the suppression of crimes which were a social danger. Various amendments had accordingly been submitted. He noted, however, that seventeen of those amendments had either been withdrawn or rejected and that, of the eight amendments adopted, some related only to points of drafting.

In respect, however, of the question raised in his own amendment, there was a real gap in the draft Convention. The question had been left open deliberately, in order that the Conference itself might fully consider it. The Committee of Experts had stated its opinion in the last two sentences of its observations on Article 6.<sup>4</sup>

M. Koukal did not think any objection could be raised to his proposal. In any illicit transaction, there were, broadly speaking, two parties: the trafficker, on the one hand, and, on the other, some unfortunate person of weakened will-power. The former was guilty of a whole series of illicit acts: the manufacture, or extraction, of the drugs, the transport of the drugs and the sale thereof. The latter was guilty only of the punishable offence of purchase. It was the trafficker and not his victim who threatened society. If the profits he had made in the transaction were not confiscated, they would later enable him to continue his nefarious activities. It was clear, therefore, that such criminals should not be allowed to retain their ill-gotten gains.

M. DE REFFYE (France) thought everyone agreed that, as far as possible, it would be desirable to confiscate the fortunes acquired in the illicit traffic. In the Committee of Experts, the Soviet representative had raised this question and had stressed the immorality of allowing such fortunes to be retained by those who had made them. The Committee had considered the question very fully, and several members had expressed the greatest sympathy with the Soviet proposal. The Committee had been forced to the conclusion, however, that it would be practically impossible to ascertain exactly what the traffickers had done with the money they had received. For instance, they might have hidden it or entrusted it to other persons. In cases where it had been invested in buildings, the trafficker might not have made the purchase in his own name.

M. de Reffye doubted whether it would be of any use for the Conference, in its turn, to engage in a lengthy discussion of this question, probably only to reach in the end the same conclusion as the Committee of Experts.

Dr. SCHULTZ (Austria) was in favour of the Czechoslovak amendment. Every useful measure should be taken for combating the illicit traffic, and the offenders should not, therefore, be allowed to keep profits which they would later use for continuing that traffic.

In the Committee of Experts, the question had, he understood, been considered in its widest aspect. If it were known that a trafficker had no other occupation, then all his property, in whatever form, could, Dr. Schultz thought, be regarded as representing gains derived from the illicit traffic. Nevertheless, he agreed, however, that it would be impossible to provide in the Convention for the confiscation of all such profits.

Moreover, in the Czechoslovak amendment, he understood the word "profits" to refer only to those derived from a specific offence. It would be easy, in that case, for the police to seize any

<sup>1</sup> Document Conf.S.T.D.23(c).

<sup>2</sup> See page 109.

<sup>3</sup> Document Conf.S.T.D.34.

<sup>4</sup> Document Conf S.T.D.2, Annex 3.

money they discovered at the time of making the arrest. Dr. Schultz realised the difficulty of ascertaining what was done with other money received. Nevertheless, it might, in many cases, be possible to trace it. To take an analogous case, it was laid down in the Austrian Penal Code, in the matter of corruption of public officials, that the gift accepted by the official, or the value of such gift, should be confiscated by the State. Even if the money had passed to another hand, it was possible, if proof were forthcoming, to confiscate an equivalent sum. It ought to be possible to make some similar provision in the present Convention.

Mr. HARDY (India) associated himself with what the President and M. de Reffye had said. He thought, moreover, it would be entirely out of place to insert a provision of this kind in Article 6. In Article 1, the offences to be punished under the Convention were defined and the form of punishment was laid down; Articles 3, 4 and 5 sought to ensure that offenders should not be able to escape justice by taking refuge in another country; and Article 6 was intended merely to settle how the goods used in connection with the commission of the offence were to be disposed of. The confiscation provided for in this article was not intended as a penalty, but as a means of preventing the goods from being used any further in the illicit traffic. In the Convention on Counterfeiting Currency, Article 11 had precisely the same object; it confined its attention to articles which, under Article 3, were "peculiarly adapted" for the counterfeiting of currency. He thought the Conference should keep to the definition as at present given and not seek to introduce a provision which fell outside the scope of Article 6 of the draft Convention.

M. LACIKEVITCH (Union of Soviet Socialist Republics) said the Soviet representative in the Committee of Experts had made a very far-reaching proposal, which, if adopted, would oblige Governments to confiscate the whole of the fortunes acquired in the illicit traffic. It was clear, however, that the proposal would not be accepted, so that, on grounds of expediency, he would not press for its examination. He thought, nevertheless, that, had it been possible to incorporate that proposal, the value of the Convention would have been very greatly increased.

The Czechoslovak amendment, however, was of an entirely different character. It only related to confiscation of profits in cases where it could be clearly established that they had been derived from the illicit transaction in question. Within those limits, it ought to be possible to take immediately effective action. In cases where it was not possible to obtain proof, the proposed provision would not apply. Where, however, proof was forthcoming, it would be unjust and illogical, while punishing the trafficker by deprivation of liberty, to allow him to keep, as his inviolable property, the gains he had derived from his offence. To omit any provision regarding those gains would be to rob the Convention of a great deal of its value.

Colonel SHARMAN (Canada) said that, as Article 6 dealt with seizure and confiscation, he had reserved his remarks on the question until the discussion of that article.

It was obviously impossible to ascertain all the profits a trafficker had made, but the Canadian authorities knew by experience that it was an easy matter to seize the money, often a very considerable sum, involved in the particular offence for which the trafficker was arrested.

He entirely agreed with the Czechoslovak proposal and the only point he wished to raise was a drafting one, relating to the word "profits". If a trafficker, on being arrested, were found to have in his possession, say, \$1,000, he might claim that, of that sum, only \$200 represented profit, the remainder representing the price he had himself paid for the goods. Canadian law therefore provided for the confiscation of "money used for the purchase of" the goods, and it was then possible to seize the whole sum. Frequently that money had been police money in the first instance, which could now usefully be employed a second time in establishing cases against traffickers.

M. DA MATTA (Portugal) said his delegation to some extent approved the principle of the proposal. It was true that there was a gap in the Convention. Would it not be better, however, to leave it open, rather than seek to close it by a provision which would give rise to great, and perhaps insuperable, difficulties?

The question of the confiscation of money profits gave rise to all kinds of legal objections; for instance, when those gains were inherited. Confiscation of buildings was a still more serious matter, and under Portuguese law such confiscation could never be accepted in the terms proposed.

In view of the practical difficulties involved, his delegation must, therefore, oppose the amendment.

M. LATOUR (Brazil) strongly supported the Czechoslovak amendment. One of the essential aims of the Convention was to prevent, not only goods, but also capital from being employed in the illicit traffic. The question of the trafficker's profits must be taken into account if it were sincerely desired to obtain the fullest possible results from the Convention.

M. da Matta had said it would, in some cases, be difficult to apply that provision under national law. M. Latour thought, however, that the Drafting Committee would easily be able to draw up a form of words which would be adaptable to all national legislations. Since it was not proposed to confiscate the entire profits, but only the liquid assets, he did not think there could be any objection to the proposal on the score of its impracticability.

Mr. DOWSON (United Kingdom) fully appreciated the admirable motive which had prompted the Czechoslovak delegation to make its proposal. He entirely associated himself, however, with what M. da Matta had said, and he felt that it would be impossible to find a form of words which would be generally acceptable. It seemed to him that, rather than attempt to confiscate the profits, a heavy fine was a far more practicable measure. He thought the proposal unacceptable and would be compelled to vote against it.

*A vote on the Czechoslovak amendment was taken by roll call.*

*The following nine delegations voted in favour : Afghanistan, Austria, Brazil, Canada, China, Czechoslovakia, Union of Soviet Socialist Republics, United States of America, and Uruguay.*

*The following seven delegations abstained from voting : Egypt, Iraq, Japan, Poland, Roumania, Spain and Yugoslavia.*

*The following thirteen delegations voted against the amendment : United Kingdom, Cuba, Denmark, France, Greece, Hungary, India, Irish Free State, Liechtenstein, Netherlands, Portugal, Siam and Switzerland.*

*The Czechoslovak amendment was therefore rejected by 13 votes to 9, with 7 abstentions.*

M. CONTOUMAS (Greece) had voted against the proposal because he thought the question of seizure and confiscation of profits derived from the illicit traffic a very delicate one. At the same time, he considered that the different countries should, under their own law, be free to go much farther than the Convention provided, even seizing, if they wished, the whole of a trafficker's property.

The PRESIDENT asked the United States delegation if it would be prepared to accept the Swiss amendment with the addition of the saving clause.

Mr. HARDY (India) said he was quite ready to accept the United States, but not the Swiss, amendment.

Mr. WARD (United States of America) said that the American delegation could accept the Swiss amendment if the words "shall be liable to seizure and confiscation" were substituted. The delegation, while not regarding this qualification as indispensable, thought it a desirable one.

*On a vote being taken on the United States amendment, 14 delegations voted for and 7 against.*

*The United States amendment was adopted.*

*Article 6 was adopted at a first reading.*

#### ARTICLE 7.

1. *For the purpose of facilitating the carrying-out of its obligations under this Convention, each of the High Contracting Parties shall, if it has not done so already, set up, within the framework of its domestic law, a central office for the supervision and co-ordination of all operations necessary to prevent the offences specified in Article 1 and for ensuring that steps are taken to prosecute persons guilty of such acts.*

2. *This central office :*

(a) *Shall be in close contact with other official institutions or bodies dealing with narcotic drugs and with the central offices of other countries ;*

(b) *Shall centralise all information of a nature to facilitate the investigation and prevention of the offences specified in Article 1 ;*

(c) *May correspond direct with the central offices of other countries.*

3. *Where the Government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and provincial governments, the supervision and co-ordination specified in paragraph 1 and the requirements specified in (a) and (b) of paragraph 2 may, as regards matters exclusively within the jurisdiction or executive authority of a provincial government, be carried out by means of a provincial central office.*

4. *Where the present Convention has been applied to any territory by virtue of Article . . . (the colonial article), the requirements of the present article may be carried out by means of a central office set up in or for that territory, acting in conjunction, if necessary, with the central office in the metropolitan territory concerned.*

5. *The powers and the functions of the central office may be delegated to the special administration referred to in Article 15 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs of 1931.*

The PRESIDENT announced that amendments to this article had been submitted by the Chilean, Cuban and Spanish delegations.

*Amendment proposed by the Chilean Delegation.<sup>1</sup>*

"To retain paragraph 1 as far as the words 'a central office', and replace the rest by the following text:

"Including a police force specialising in drug problems, and entrusted with the task of carrying out adequate measures, by itself or in co-operation with other bodies, for the prevention and punishment of the offences specified in Article 1."

*Amendment proposed by the Cuban Delegation:<sup>2</sup>*

"To insert, either before or after article 7, the following article:

"The High Contracting Parties undertake to create or maintain an adequate force of specialised narcotic police entrusted with the prevention and suppression of the illicit traffic in opium and its derivatives and in coca leaf and its derivatives, as well as in all other substances covered by existing opium conventions."

*Amendments proposed by the Spanish Delegation.<sup>3</sup>*

1. "To insert between paragraphs 2 and 3 the following paragraph:

"The High Contracting Parties undertake to employ, for the detection and suppression of the offences specified in Article 1, adequate specialised police forces, trained for this purpose."

2. "To amend paragraph 3 to read as follows:

"3. Where the Government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and regional or provincial governments, the supervision and co-ordination specified in paragraph 1 and the requirements specified in (a) and (b) of paragraph 2, shall be organised in accordance with the constitution of the country."

M. DE BLANCK (Cuba) said that his Government had noticed that the draft Convention imposed no obligation on States to set up or maintain an adequate specialised police force responsible solely for suppressing the illicit traffic in narcotic drugs and preventing the spread of that traffic. The Central Office to be organised in pursuance of Article 7 could not take the place of a specialised police force as regards narcotic drug questions.

The Cuban Government had set up a specialised police force with the duty of tracing and suppressing all attempts by national or international traffickers to engage in the illicit traffic in Cuba. As it was thus safeguarding the interests of other States, his Government felt it was entitled to expect those States to take similar measures to safeguard Cuba's interests.

Clearly, the chief aims of the draft Convention could only be achieved if forces existed to put them into effect. The Conference might, perhaps, lay down that the contracting parties should set up and maintain in their territories adequate forces of specialised anti-narcotic police.

The Conference would recollect that, as stated in the report of the Committee of Experts,<sup>4</sup> certain members of the Committee of Experts had requested that the attention of the diplomatic conference should be drawn to the question of the creation in each country of an adequate special police force for the purpose of taking effective measures against persons committing the offences mentioned in Article 1. His colleagues would also recollect that, when the draft Convention was communicated to Governments, the Council had made a special reference to the question of specialised police forces, pointing out that the Conference would be entitled to discuss any proposal which any member of the Conference wished to submit.<sup>5</sup>

The fact of there being no mention of specialised police forces in the draft Convention did not dispense the Conference from dealing with the question, and it should therefore consider any proposal which would tend to the suppression of the illicit traffic.

If the Conference wished to have fuller details of the results achieved by the special police forces in question, perhaps the delegates of Canada, Egypt or the United States of America, which had for years past maintained such forces and had found them invaluable in dealing with illicit traffickers, whether national or international, would be able to furnish arguments in support of the Cuban delegation's proposal. He did not, however, regard that as indispensable, as specialised police forces had already proved their worth.

Believing that the Conference would wish to give every consideration to the question, the Cuban delegation had embodied its proposal in a new article, or it might also be made an additional

<sup>1</sup> Document Conf. S.T.D. 33.

<sup>2</sup> Document Conf. S.T.D. 11.

<sup>3</sup> Documents Conf. S.T.D. 14 (a) and (b).

<sup>4</sup> Document Conf. S.T.D. 2, Annex 3.

<sup>5</sup> Minutes of the ninetieth session, January 20th, 1936.

paragraph in Article 7. The Spanish delegation had also submitted an amendment on the subject, which, in view of its more general wording, might possibly be considered more suitable. In that case, the Cuban delegation was prepared to accept the Spanish amendment.

M. JIMENEZ (Chile) had nothing to add to the amendment submitted by his delegation.

Mr. HARDY (India) was, for various reasons, strongly opposed to the insertion of the paragraph proposed by the Chilean delegation. In the first place, Governments had not been consulted on the question of specialised police forces and, though some members had asked to have the attention of the Conference drawn to the subject, the Advisory Committee as a whole had not endorsed the proposal, and he himself, moreover, had no instructions from the Government of India. The Advisory Committee even had never really discussed the principle involved. The question, it was true, had been raised by M. de Vaseoneellos in the 1934 Assembly, which, without discussing the matter, had passed a resolution agreeing that the organisation of special police forces was the only effective way of suppressing illicit traffic.

In the second place, he was unable to grasp the exact meaning of the proposal. Did it mean that countries were to employ special police forces to deal with drug trafficking and with no other offences? When the Advisory Committee, in pursuance of the Assembly resolution, had asked Governments what action had already been taken in this connection, several Governments had pointed out that they were already employing such forces. India, for instance, had reported that for more than fifty years there had been a special preventive section in the Excise Departments of the various provinces; the Departments, which controlled all transactions in opium, hemp and alcohol, collected the revenue due on those commodities and prevented the use of other narcotic drugs. The mover of the Assembly resolution, however, had made it clear that he could not regard the employees of such monopolies as suitable for employment as specialised police, since they would be more concerned with collecting revenue than in suppressing illicit practices. Though he did not share this opinion, it proved, he thought, the confusion prevalent on the subject. He would, therefore, be unable to support the amendment.

M. CASARES (Spain) thought that the account given by the delegate of India of the previous history of this question would convince the Conference that it was not a last-minute proposal. The question had been discussed at the 1934 Assembly; a resolution had been adopted and communicated to the Governments concerned; moreover, the Council had said that the question would be raised at the present Conference.

One misunderstanding might, perhaps, be eliminated if the expression "employ" in the Spanish delegation's proposal were amended to read "detach" or "detail", which more nearly represented the sense of the French term "affecter".

Dealing with the objection made in some Governments' replies that similar forces were maintained under a different name, the Spanish delegate emphasised that the words "police force" should be construed in the widest possible sense as comprising also persons with special knowledge of the various Conventions and regulations for combating the illicit traffic in drugs. The exact wording of that part of the amendment could be left to the Conference; the essential point was to secure recognition of the principle that it was necessary to have special police forces with adequate training.

It was also urged that many countries had no need to organise such forces, as they were practically free from the evils of drug addiction or illicit trafficking. In such circumstances, he agreed that his amendment might seem unnecessary, but he doubted whether there were many countries where there was no narcotic drug traffic in some form or other, were it only traffic in transit.

The objections urged were, therefore, not really weighty, and M. Casares submitted that, in view of its quite general wording, the Spanish delegation's amendment could be accepted by the Conference.

M. DE VASCONCELLOS (Portugal) could not agree to the amendment being embodied in an article of the Convention. In Portugal, as in some other countries, the problem of the drug traffic did not exist, Portugal must, therefore, refuse to shoulder the financial burdens which the insertion of such an amendment would imply. In the form of a recommendation in the Final Act, the amendment might be acceptable, but if adopted as a formal article, he would have to enter a reservation.

Dr. SCHULTZ (Austria), speaking, first, as the delegate of Austria, could not agree to any of the amendments submitted on this subject. In the first place, the question had not been specifically referred to Governments for their views, a procedure which, in view of the serious obligations and heavy expenditure involved, was quite indispensable.

Secondly, the question seemed to him to be one of purely national concern, to be settled in accordance with the special circumstances of each particular country. Document O.C.1627, containing the replies of Governments, showed very clearly the different methods which certain countries had adopted for dealing with the problem, but a method suitable in one country might be quite inapplicable in another.

Austria would certainly be unable to accept the fresh financial burdens involved by such a provision, though she fully realised the need for the reform proposed and was doing her best to perfect her own police organisation in the direction suggested.

As representing also the International Criminal Police Commission, Dr. Schultz was fully aware of the value of the principle of specialisation in police activities, but did not think this rule applied solely in the sphere of narcotic drugs. The suggestion was by no means novel, and in other branches of crime the principle had long since been applied. Nevertheless, it was a matter for each country to organise its police force as best suited its own internal organisation.

In conclusion, Dr. Schultz pointed out that he desired to avoid any misunderstanding. He did not disapprove of the principle underlying the various amendments submitted on this point; he merely thought that the matter should not be dealt with within the framework of the draft Convention.

M. DE CASTRO (Uruguay) might have agreed with the objections urged by the delegates of Austria and Portugal, if the amendments could be construed as implying an obligation on the contracting parties to create a special police force solely for narcotic drugs offences. That, however, was not how he construed the Spanish delegation's proposals. The suppression of the illicit drug traffic was one of the activities of police forces as at present existent, but M. Casares' idea was that, as drug-traffickers were extremely skilful, States should be asked to see that their police forces were specially trained to checkmate the activities of such criminals. Taken in that sense, he fully supported the Spanish delegation's proposal and left it to the Conference to decide whether it should be embodied in an article or in the Final Act. The proposal, moreover, was a perfectly logical outcome of the Opium Conventions previously concluded in 1912, 1925 and 1931.

He had also been instructed by this Government to inform the Conference that, since 1933, Uruguay had, in pursuance of the 1931 Limitation Convention, set up a special organisation (the Special Commission for combating Drug Addiction and controlling the Drug Traffic), which kept in touch with the central offices of other countries and with the League opium organisations, and which was designed to combat the illicit traffic in dangerous drugs. That Commission worked under the Ministry of Health and had already succeeded in having special penalties enacted for illicit trafficking in narcotic drugs.

In conclusion, M. de Castro recommended the adoption of the Spanish delegation's amendment, either in the form of a substantive article or of a recommendation in the Final Act.

*The continuation of the discussion was adjourned to the next meeting.*

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## TWENTIETH MEETING.

*Held on Saturday, June 20th, 1936, at 3.30 p.m.*

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*President : M. LIMBURG.*

### 27. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE 7 (continuation).

The PRESIDENT asked the authors of the various amendments<sup>2</sup> to endeavour to combine the texts proposed, as the idea which they expressed was identical.

Colonel SHARMAN (Canada) failed to understand the attitude of delegates who were unable to agree to the proposal to set up specialised police forces where necessary, for the sole reason that the proposal was unnecessary in their country. When considering Article 1, those delegates had not refused to agree to their country making the necessary legislative provision for penalisation of the production of narcotic drugs or the illicit traffic in the same as and when required. There was no question of asking countries in which the drug problem did not arise at the present time to set up police forces to combat a non-existent evil: they were merely being asked to employ specialised agents for the repression of the illicit traffic as and when the occasion for its repression arose in their respective territories. The proposal appeared to be eminently one which came within the scope of an international convention.

In Canada, it was realised fifteen years ago that special police forces would have to be established to combat the illicit traffic in narcotic drugs. Federal police officers with several years' experience were given special training for a number of months. Drugs police squads were organised and posted at strategic points, and relieved and reinforced when necessary.

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<sup>1</sup> Document Conf.S.T.D.2, Annex 3.

<sup>2</sup> See page 119.



Canadian squads were frequently engaged for months on end in co-operation with the United States special drug police in the most important cases of illicit traffic. In order to get hold of the guilty persons, the drug police often had to pass themselves off as traffickers, so that it was absolutely essential they should have a thorough initiation into everything that had to do with the illicit traffic. Hence the need for special training for these police. During the last few years, there had been some twenty important cases of illicit trafficking; mostly of an international character, the discovery of which would have been impossible without the assistance of the special drug police. It had even been necessary to employ lawyers with special knowledge of drug cases.

It was for these reasons that Colonel Sharman supported the proposal for the establishment of specialised police forces, in order to combat the illicit traffic effectively in countries where it existed.

Mr. DOWSON (United Kingdom) appreciated the willingness of the authors of the amendments to put their texts into the form of a resolution; but he had difficulty in accepting their proposal. No one denied that it was necessary for countries to take adequate steps to repress the illicit traffic when they undertook to do so in an international Convention; but the proposed amendments required Governments to carry out their obligations in the matter by one particular method. He entirely agreed with the very sensible observations which Dr. Schultz had made on that subject at the previous meeting<sup>1</sup>. Each country should be allowed to organise its police force as it thought fit. An international Convention ought not to stipulate that police forces should be organised in this or that particular manner: the manner indicated might be incompatible with the general organisation of the police in certain countries. Moreover, the organisation of police forces should be regarded as an internal question. He was not, of course, opposed to special measures for the suppression of the illicit traffic, but he would be obliged to vote against the Spanish delegation's amendment.

M. TREBICKI (Poland) supported the proposal to combine the three amendments in the form of a resolution to be attached to the Convention.

The illicit traffic problem had two aspects: the international aspect and that which it presented in the different countries. M. Trebicki was in sympathy with the idea underlying the amendments in question, but thought they did not take sufficiently into account the form assumed by the illicit traffic in each particular country. In Poland, for example, the police were successful in suppressing the illicit traffic without any special organisation. When times were prosperous, a specialised police corps for the purpose might be established; but the adoption of such a measure at a time of crisis was out of the question because of the increased budgetary charges it would entail.

As regards the international aspect of the problem, every country, as a member of the international community, was concerned in the suppression of the illicit traffic. But the narcotic drugs problem, while of great importance in certain countries, was of secondary importance in others. In consequence, as members of the international community, the delegates to the Conference had met for the purpose of laying down principles: they should not deal with purely administrative questions, such as the organisation of police forces. It was better to leave it to each country to organise as it thought fit its own police forces for the effective suppression of the illicit traffic.

M. DA MATTA (Portugal) noted that the three amendments related chiefly to the first paragraph of Article 7. He drew the Committee of Jurists' attention to the form of the first paragraph of that article in the revised draft Convention, which, in his opinion, was much less clear than the form employed in the previous drafts. The first words of the text of the revised draft Convention: "For the purpose of facilitating the carrying out of its obligations under this Convention . . ." were incorrect from a legal standpoint. An article should lay down a principle, but should not give the reason for it. The words in question should be omitted.

The Portuguese delegation's attitude had been defined at the previous meeting.<sup>2</sup> He might, however, add that the Portuguese Government would shortly promulgate a decree concerning the Portuguese National Commission entrusted with the suppression of the illicit traffic in narcotic drugs, counterfeiting currency and traffic in women. The departments responsible for the suppression of the illicit traffic in narcotic drugs would be organised in accordance with the provisions of that decree. The Portuguese Government could not undertake to set up specialised police forces for suppressing the illicit traffic, as no special police organisation for that purpose was contemplated. The suppression of the illicit traffic in narcotic drugs and of activities in connection with counterfeiting currency were entrusted in Portugal to what was known as the International Police Section. Moreover, M. Casares had said that the Spanish<sup>3</sup> delegation's proposal was only intended to apply where it was necessary: and in Portugal there was no illicit traffic and no drug addiction. Both were to be found, it was true, in a Portuguese possession—Macao: but, in Macao, there was a special police force responsible for suppressing the illicit traffic in narcotic drugs.

<sup>1</sup> See pages 120 and 121.

<sup>2</sup> See page 117.

<sup>3</sup> See page 120.

If the three amendments in question could be modified on the lines suggested by Mr. Dowson, the Portuguese delegation could accept them. If that were impossible, it could only vote for them if they were converted into a resolution.

Dr. Hoo Chi-Tsai (China) supported the Spanish delegation's amendment. He noted that all the delegates approved it in substance—that was to say, they were all agreed as to the necessity for specialised police forces in countries where the narcotic drug problem existed (that was to say, those in which illicit traffic and addiction were rife). Agreement should therefore be possible. The Spanish amendment did not propose the establishment but the employment of specialised police forces for the detection and suppression of the offences specified in Article 1. All that was necessary, therefore, was to second officials for the suppression of the illicit traffic. With that interpretation, the Spanish amendment could be accepted by all delegations. It was obvious that every country in which the illicit traffic problem existed already possessed police officers to deal with narcotic drug cases. All that needed to be done, therefore, was to give the officers in question special training. The increase in their efficiency as the result of the special training would reduce current expenditure rather than add to it.

Dr. Hoo would prefer the Spanish amendment to be combined with the Chilean amendment, as the latter contained two ideas that were not expressed in the former—the prevention of the offences specified in Article 1 and the possibility of co-operation between the specialised police force and other bodies (that was to say, other police forces or the Customs) for the prevention and punishment of the offences specified in Article 1. The Spanish amendment would be more complete if that addition were made. In any case, Dr. Hoo would vote for the Spanish amendment.

M. JIMENEZ (Chile) said that, in his opinion, the utility of a convention was proportionate to its explicitness and that, when dealing with the suppression of the illicit drug traffic, it was necessary to be as explicit as possible. The traffic was very well organised; and, if it was to be effectively suppressed, decisive measures must be adopted and executed rapidly. It was therefore essential to have a trained staff always available. Moreover, the drug question was a complicated one, beyond the range of ordinary policemen, who, in any case, were mostly occupied in quite different and constantly changing work.

Replying to the objections made to the Chilean amendment, he said that those countries which had no special police force because they had no drug traffic were to be congratulated. As for the other countries where the drug traffic problem existed, but which objected that it was already dealt with by the national police force, all they needed to do was to detail officers of that force for the sole duty of dealing with offences against the drug laws. The Chilean delegation had deliberately used the word "adequate" in connection with the measures to be taken by the police force specialising in drug problems. The organisation of the force would have to correspond to the needs of each contracting party. If, however, the Conference would not accept his amendment, he would support the Spanish amendment.

M. GORGÉ (Switzerland) agreed with most of the objections to the Spanish amendment and particularly with the completely convincing arguments advanced by Dr. Schultz. For his own part, he would be in a very awkward position if the Conference adopted the amendment, because he doubted whether Switzerland would be able to ratify the Convention in that case. It was not for him to say what the decision of the Swiss Government and Parliament would be; but, if he had any doubt about the possibility of ratification, he would not be able to sign the Convention.

In Switzerland, he explained, the police organisation was cantonal, and there were twenty-five cantonal police forces. The Federal Government could hardly omit to consult the cantonal Governments before it signed a Convention containing clauses that might involve additional expenditure by the cantons. It was a pity that the amendment had not been moved earlier: but in any case it was doubtful whether the Federal Government would ever have been able to subscribe to the obligation in question, even if it had had time to refer the matter to the cantons, because questions involving national sovereignty were involved. It must be borne in mind that the Conference was now considering, not a question of principle, but a question of administration and execution. It should not concern itself with the measures which the Governments would take to meet their international obligations.

M. Gorgé also expressed some doubt as to the advisability of converting the amendments to Article 7 into a resolution. It had been pointed out at the previous meeting<sup>1</sup> that the Assembly had already passed a resolution in the same sense. Another recommendation would, therefore, be merely a repetition of the Assembly's resolution.

As to the suggestion that the three amendments under discussion should be amalgamated, he did not think that would be useful at the present juncture. The Conference must first reach a decision on the principle of the compulsory formation of a specialised police force.

Mr. Dowson (United Kingdom) felt he ought to remove a misunderstanding in regard to his previous remarks. He wished to make it clear that he entirely associated himself with Dr. Schultz's observations and he had declared his opposition to the amendments. He would vote against them because he thought they were based on a wrong principle: the formation of specialised police forces could not be made an international obligation.

<sup>1</sup> See page 120.

M. BENAVIDES (Uruguay), referring to the statement made by his colleague at the previous meeting,<sup>1</sup> added that Uruguay was just setting up a special Commission under the Ministry of Health to deal with drug addiction and the control of the drug traffic. The Commission would have at its command what was known as a social police force, dealing both with the drug problem and with the traffic in women. It was well-known that many of those engaged in the traffic in women also trafficked in drugs. The social police force was to specialise in putting down those two types of offence. If the Convention imposed an obligation to set up a specialised police force to deal with the illicit traffic, he did not know whether he would be able to induce his Government to accept that part of the Convention. On the other hand, he had no objection to the various amendments under discussion being put in the form of a recommendation: but he could not vote for them in the form of clauses to be embodied in the Convention.

M. DE VASCONCELLOS (Portugal) warned the Conference against coming to a decision that would prevent some of the countries most in favour of the Convention from signing it. Portugal would not be able to sign if the Convention required the contracting parties to set up special police forces. The organisation of the Portuguese police, so far as the drug traffic was concerned, had already been explained. The Government could do no more in that direction. He would agree, however, to the embodiment of the proposals in a recommendation.

M. CASARES (Spain), replying to the objections made to the Spanish amendment, said that he bowed to the argument advanced by M. Gorgé.

Referring, on the other hand, to the objection that the question was a domestic one, and that the Conference could not concern itself with the organisation of police forces, he pointed out that the central office, proposed in Article 7 of the revised draft Convention, would also be a national service. Moreover, the 1931 Convention contained clauses for the organisation of national services to limit the manufacture and regulate the distribution of narcotic drugs. The objection that the question was a domestic one must therefore be dismissed as unfounded.

As to the objection that the Spanish amendment would involve extra expense, he must point out that there was no question of setting up new police forces, but merely of detailing officers of the existing forces for special work and giving them special training. The extra expenditure involved would be insignificant.

M. Casares asked the Conference to vote on the principle—namely, on the question whether a clause providing for the formation of specialised police forces should be embodied in the text of the Convention. If the Conference were agreed on that principle, he proposed that it should then take a decision on the question whether the Spanish amendment should be supplemented by the two clauses in the Chilean amendment, the addition of which to the Spanish amendment had been proposed by Dr. Hoo Chi-Tsai.

M. DE VASCONCELLOS (Portugal) stressed the force of the financial objection. In Portugal's case, the effect of the proposal to set up specialised police forces for the suppression of the illicit drug traffic would be that police officers who were at present busy would have to be detailed to the drug service, where they would have nothing to do. He repeated that, if the proposal were adopted with a view to its incorporation in an article, Portugal would be unable to sign the Convention.

Dr. SCHULTZ (International Criminal Police Commission) observed that the central offices to be set up under Article 7 of the revised draft Convention were not merely for purposes of domestic administration, as the Spanish delegate suggested: they would be component parts of a vast international organisation.

As to the probable cost of detailing existing police officers for the sole duty of putting down the illicit traffic, he could say, on the basis of his own professional experience, that some extra expense would certainly be involved, because the officers in question would have to be replaced by others in their previous positions.

As to the proposal that the amendments should be converted into a recommendation, he thought a recommendation of that kind would be a mere repetition of the Assembly's previous resolution on the subject.

The PRESIDENT observed that the authors of the amendments had neither drafted a single text for insertion in Article 7 nor prepared a form of recommendation. He noted, moreover that the adoption of a clause making it obligatory on the contracting parties to set up specialised police forces to deal with the drug traffic would prevent some Governments from signing the Convention. He therefore asked the authors of the amendments whether they thought that the inclusion of their proposal would be sufficient compensation for the refusal of some countries to accede to the Convention. He proposed that the Conference should vote on the principle of including a provision for the formation of specialised police forces.

<sup>1</sup> See page 120.

M. CASARES (Spain) said that the President had put the question in such a form as to make the authors of the amendments responsible for preventing certain countries from signing the Convention. That being so, he was prepared, speaking as the author of one of the amendments, to accept the President's suggestion; he would not press for the embodiment in an article of the principle of setting up specialised police forces, but would agree to its being formulated as a recommendation.

M. JIMENEZ (Chile) and M. DE BLANCK (Cuba) concurred in M. Casares' suggestion.

M. DE VASCONCELLOS (Portugal) thanked the delegates who had submitted amendments for their conciliatory spirit.

*The Conference decided to include in the Final Act a recommendation based on the Spanish, Chilian and Cuban amendments.*

M. CASARES (Spain) then introduced his second amendment,<sup>1</sup> explaining that it in no way affected the substance of Article 7. Its object was merely to facilitate the application of the clause in question, by taking into account the organisation of certain countries.

In the text of the draft Convention, reference was made to cases in which "the executive authority . . . is distributed between central and provincial governments". In Spain, for example, a province corresponded to a French department; in other countries, it meant a very large area indeed. The expression "regional or provincial governments" in the Spanish amendment covered other administrative areas as well as provinces and so made the Convention more flexible.

The object of the second part of the Spanish amendment was to eliminate the details from the end of paragraph 3 of Article 7 of the draft Convention by using a more elastic formula—namely, "the requirements specified . . . shall be organised in accordance with the Constitution of the country".

The administrative details specified in the text of the draft Convention admitted of exact application in some countries, but not in others.

M. DA MATTA (Portugal) thought the Spanish amendment much better than the text of the draft Convention, but suggested two slight changes:

Under the laws of some countries, of which Portugal was one, the word "region" meant a definite area, more particularly a military area. In other countries, a region might be the same thing as a district. If the expression "local government" were used, that would cover every possible case.

The second part of the Spanish amendment simplified the latter part of the text of the draft Convention, which was an advantage. At the same time, in some countries, the administrative divisions were not strictly part of the constitutional system—for example, in Portugal. It would be preferable to say, "in accordance with the *administrative organisation* of the country".

In paragraph 2 of the text of the draft Convention, he drew the attention of the Committee of Jurists to the point that sub-paragraph (c) was superfluous, in view of the provisions of sub-paragraph (a).

Mr. HARDY (India) reminded the Conference that paragraph 3 had been embodied in the Convention by the Committee of Jurists at his suggestion, with the object of making the article acceptable to countries like India, where the Constitution was of a federal nature. He would explain briefly that, although he was in sympathy with the Spanish amendment, the Indian system of provincial control dated from many years back and worked satisfactorily.

It was no part of the duties of the provincial offices to correspond with offices in foreign countries: that was the business of the central Government. It should, he thought, be easy to find a formula that would meet everybody's wishes.

Another point was that the Spanish amendment contained in the French text the words "*l'exécution des obligations spécifiées . . . s'organisera*", and in the English text the words "requirements . . . shall be organised". It was not for him to give an opinion on the French text; but he thought the proper expression in English would be "shall be carried out". The Committee of Jurists might go into that question.

Mr. Hardy did not quite see the point of M. da Matta's amendment. In particular, he would not like the word "provincial" to be struck out. But he thought the point could easily be dealt with by the Committee of Jurists.

M. LATOUR (Brazil) was glad to be able to say that his Government had no need to take special administrative measures to give effect to the provisions of Article 7.

Having regard to the provisions of the 1931 Convention (Article 15, Special Administration), the Brazilian Government had set up an administrative organisation consisting of representatives of all the Federal departments directly or indirectly concerned in the suppression of the drug traffic. After that organisation had been working for some time, and had had repeated contacts with the federated States, the Brazilian Government, following the usual practice, had set up, by a decree dated April 28th, 1936, an official body, known as the National Drug Control Board.

The functions of the Board included advising on all matters connected with drugs and arranging for administrative action or proposing legislation to enable the country to carry out its international undertakings. It also suggested to the executive body methods of ensuring close

<sup>1</sup> See page 119.

and effective co-operation by Brazil in the international field in connection with the suppression of the drug traffic, primarily on the lines of co-ordination between the domestic police services and the international service connected with the League of Nations.

The Board was in a position to perform, not only the duties contemplated in paragraph 2 of Article 7, but also, as he had just said, other more general functions, including that of working out a policy of suppression in all its aspects, in accordance with the laws and administrative regulations in force in the country. For example, delegates to international conferences such as the present Conference were selected on the advice of the Board.

M. LATOUR was in favour of Article 7 as a whole, but was afraid he could not agree to all its sub-paragraphs; his Government, in particular, could not accept certain parts of paragraph 3. As Brazil had already made the preliminary arrangements, it was in a position to set up provincial offices. The question dealt with in sub-paragraph (a) of paragraph 2, however, was an administrative question, to be dealt with by the federated States. Their jurisdiction was apt to be very elastic in domestic matters—that was to say, within the territory of the Republic. In doubtful cases, the Federal Government came to an arrangement with the States. On the other hand, their jurisdiction certainly did not extend to foreign affairs. In particular, the provisions of sub-paragraphs (a) and (c) of paragraph 2, in conjunction with those of paragraph 3, would enable the provincial Governments to get into direct, permanent, and regular touch, even into close contact, with the central offices of other countries; in Brazil, such a situation would involve constitutional difficulties.

From the practical standpoint, he felt that, although there might be advantages in such direct relations, decentralisation on those lines in Brazil, which consisted of twenty federated States, the capital of the Republic and a Federal territory, would run counter to the unitary tendencies illustrated by the establishment of the National Board, which was of great importance for various reasons.

If the effect of the Spanish amendment to paragraph 3 would be to eliminate the constitutional difficulties to which he had just referred, he was quite prepared to support it, having regard to M. da Matta's remarks.

M. CONTOUMAS (Greece) said that he was in some doubt about the Spanish amendment. Article 7 of the draft Convention was worded in that form with the idea of organising national services to centralise all information and keep in touch with the central offices of other countries. The essential point was that there should be an authority that could get into touch with similar authorities abroad. Mr. Hardy had pointed out in the Committee of Experts that India, having a Federal Government, could not abolish the central offices in the provinces, and would prefer to adhere to a system which had been found to work well. The experts had agreed to that and maintained the provincial offices in paragraph 3, but with a modifying clause which was to be found in the second part of that paragraph: "the requirements specified in (a) and (b) of paragraph (2) may . . . be carried out by means of a provincial central office". That phrase meant that the provincial central offices would remain, and one of them was to be put into the position which was to be occupied by the central offices in other countries, in particular, that it should be able to get into touch with them. From the standpoint of the international application of the clause, it was desirable to know with what authority to correspond when dealing with a country with a Federal Government.

The Spanish amendment met the first of those requirements—the internal one—but not the international requirement, which concerned relations between central offices.

M. CASARES (Spain) said that, if the Government of India had appointed a provincial office to keep in touch with the central offices abroad, other countries in a similar position could do the same.

M. CONTOUMAS (Greece) said that was not clear from the wording of the Spanish amendment.

M. da Matta regarded sub-paragraph (c) of paragraph 2 as superfluous, on the ground that its provisions were already covered by sub-paragraph (a). M. Contoumas would like to point out that, in the Convention on Counterfeiting Currency, the two ideas were expressed in two separate clauses. There was a good reason for that. The object was to ensure close contact with the other Federal authorities—it was not stated how. It could be done through the diplomatic channel, or in other ways; but, if it were specified in the Convention, the diplomatic channel could be avoided and direct contact maintained.

The PRESIDENT said that he had two remarks to make at that point. In the first place, he agreed with the Portuguese delegate that it would be desirable to replace the word "Constitution" in the Spanish amendment by the words "administrative organisation".

M. CASARES (Spain) had no objection to the use of either expression.

The PRESIDENT observed that there were some countries, of which the Netherlands was one, in which the police organisation had nothing to do with the Constitution; it was part of the administrative system. It had been a matter of discussion for the last fifty years in the

Netherlands whether the police should be centralised as a national police force or whether it should be partly municipal and partly national. Under the existing Constitution, the matter was entirely open.

In the second place, he agreed with M. Contonmas. The expression in sub-paragraph (c) —“ may correspond direct with the central offices of other countries ”—meant that there was no need to correspond through the Ministries for Foreign Affairs. Even if it could be shown that the same thing was implied in sub-paragraph (a), it was better to say it explicitly.

Mr. HARDY (India) thought M. Contonmas must have been labouring under a misunderstanding with regard to his proposal in the Committee of Experts to insert the provision in question in paragraph 3. He had by no means meant to suggest that the Government of India intended to appoint a provincial central office to correspond with other Governments, as that would be altogether unconstitutional. It was for the central Government alone to undertake such correspondence; and it now in fact had a special department for corresponding with the League. The Government of India proposed to continue to appoint central offices in the different provinces to carry out the duties falling exclusively within their jurisdiction or executive authority.

M. CASARES (Spain) was glad that his amendment had not encountered any serious opposition. The Committee of Jurists would be able to settle the question of drafting raised by Mr. Hardy. M. Casares agreed with M. da Matta's proposal to replace the words “ regional or provincial governments ” by the words “ local governments ”. The effect was to make the text more elastic and comprehensive. He also agreed that the phrase “ in accordance with the Constitution of the country ” should be amplified to read, “ in accordance with the constitutional or administrative system of the country ”.

M. CONTOUMAS (Greece) thought it was the text of paragraph 3 itself which had caused the misunderstanding to which Mr. Hardy had referred. Paragraph 3 said: “ the requirements specified in (a) and (b) of paragraph 2 may . . . be carried out by means of a provincial central office ”. But one of the functions specified in (a) of paragraph 2 for the central office was to keep in close contact “ with the central offices of other countries ”. Consequently, taking those two passages in conjunction, the function in question would devolve, under paragraph 3, upon the provincial central office. The text was clear and could not be interpreted in any other way. He thought it must be admitted that, with the present wording of paragraph 3, in countries with a Federal system, it would be for the provincial central office to exercise the functions specified in sub-paragraphs (a) and (b) of paragraph 2, with the possible exception of correspondence, which was not specifically referred to in either sub-paragraph.

Mr. DOWSON (United Kingdom) had a suggestion for overcoming this difficulty. In sub-paragraph (a) of paragraph 2, the words “ and with the central offices of other countries ” might be omitted, and sub-paragraph (c) might then read as follows: “ shall be in close contact with, and may correspond direct with, the central offices of other countries ”.

The PRESIDENT asked whether the Conference was ready to adopt paragraph 1 of Article 7, to which no objection had been raised.

*Paragraph 1 was adopted.*

The PRESIDENT recalled that the Brazilian delegate had raised certain objections to paragraph 2. No decision could yet be taken on that paragraph, however, as the suggestion the United Kingdom delegate had made with regard to it was connected with the Spanish amendment to paragraph 3. Accordingly, paragraph 3 must be taken first. Would it not be possible—he was making the suggestion particularly to the Spanish delegation—to retain the present text of paragraph 3, substituting for the words “ provincial governments ” the words “ local governments ”? At the end of the paragraph, the words “ provincial central office ” would be replaced by the words “ local central office ”. The difficulty to which the Greek delegate had referred would not then arise.

M. CASARES (Spain) could not agree to paragraph 3 as it stood, for the reason that it conflicted with the Spanish Constitution. The Constitution laid down the distribution of executive authority, and any transfer of such authority had to be approved by Parliament. The Spanish delegation could agree to the wording of that paragraph which it had itself proposed; otherwise, it would have to make a reservation. Incidentally, no objection had been made to its proposal.

The PRESIDENT said the Conference would first take a decision on the Spanish amendment to paragraph 3. If that amendment were adopted, the Conference would then revert to the United Kingdom delegate's suggestion in regard to paragraph 2.

M. LATOUR (Brazil) said the Spanish amendment was connected with M. da Matta's suggestion to omit sub-paragraph (c) of paragraph 2—a suggestion which specially affected Brazil.

The PRESIDENT said that, even if the Spanish amendment were adopted, it would still be possible to reject sub-paragraph (c).



M. LATOUR (Brazil) agreed. If he voted for the Spanish amendment, it would be because he considered it to be bound up with paragraph 2. There was a certain relation between that paragraph and paragraph 3, and he could not give his vote on the amendment without first knowing whether sub-paragraph (c) was to be omitted or not. Brazil had a national central office which could correspond with the League and the other national offices. The offices of the Federal States were not, however, empowered to correspond with those of foreign countries. No doubt his delegation was really in agreement with the Spanish delegation and the Conference as a whole; but a form of words was needed which would make the matter quite clear.

The PRESIDENT, to meet the wishes of the Brazilian delegate, proposed first to take a vote on paragraph 2, at the same time reserving Mr. Dowson's suggestion for subsequent consideration.

*Sub-paragraphs (a) and (b) of paragraph 2 were adopted. Sub-paragraph (c) was adopted by 11 votes to 2.*

*Paragraph 2 as a whole, subject to the decision to be taken on Mr. Dowson's suggestion, was adopted.*

The PRESIDENT read the Spanish amendment to paragraph 3, with the changes to which M. Casares had agreed :

" 3. Where the Government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and local Governments, the supervision and co-ordination specified in paragraph 1 and the execution of the functions specified in (a) and (b) of paragraph 2 shall be carried out in accordance with the constitutional or administrative system of the respective countries."

*This text was adopted by 16 votes, without opposition.*

The PRESIDENT invited the Conference to proceed to discuss Mr. Dowson's suggestion regarding paragraph 2.<sup>1</sup>

Mr. DOWSON (United Kingdom) said the only means by which a central office could keep in close contact with the central offices of other countries, as provided in sub-paragraph (a), was by corresponding with those offices, as provided in sub-paragraph (c). The two sub-paragraphs repeated one another. But sub-paragraph (c) did not apply to provincial central offices, but only to national central offices.

His suggestion was meant to meet the objections certain delegates had raised.

M. GORGÉ (Switzerland) proposed to avoid the repetition by amalgamating sub-paragraphs (a) and (c) as follows :

" Shall be in close contact with other official institutions or bodies dealing with narcotic drugs, and may correspond direct with the central offices of other countries."

M. CONTOUMAS (Greece) remarked that, if, as Mr. Dowson suggested, the words " and with the central offices of other countries " were omitted from sub-paragraph (a), there would no longer be any reason for retaining that sub-paragraph, as all the indications needed were given in sub-paragraph (b).

The PRESIDENT suggested that the proposal of the United Kingdom delegate should be adopted in principle, the final wording being left to the Committee of Jurists.

*The President's proposal was adopted.*

*Paragraphs 4 and 5 were adopted without observations.*

*Article 7 as a whole was adopted at a first reading.*

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## TWENTY-FIRST MEETING.

*Held on Monday, June 22nd, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

### 28. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>2</sup> (continuation).

#### ARTICLE 8.

1. *Each central office shall co-operate with the central offices of foreign countries to the greatest extent possible, in order to facilitate the prevention and punishment of the offences specified in Article 1.*

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<sup>1</sup> See page 127.

<sup>2</sup> Document Conf S.T.D.2, Annex 3



2. The office shall, so far as it thinks expedient, communicate to the central office of any country which may be concerned :

(a) Particulars which would make it possible to carry out any necessary investigations or operations in respect of any transactions in progress or proposed ;

(b) The exact details which it has been able to secure regarding the identity and the description of traffickers with a view to supervising their movements ;

(c) Discoveries of secret factories of narcotic drugs.

The PRESIDENT said that one amendment to paragraph 2 had been submitted by the Japanese delegation.

*Amendment by the Japanese Delegation.*<sup>1</sup>

“ To insert the word ‘ illicit ’ before the word ‘ transactions ’ in sub-paragraph (a) of paragraph 2.”

M. NISHIMURA (Japan) pointed out that the amendment proposed restored a word which had been deleted by the Committee of Experts from the drafts prepared for the first and second consultations. In view of the definition of the duties of central offices contained in the first paragraph of the article, it would seem unnecessary to oblige them to communicate details of legitimate transactions.

M. DA MATTA (Portugal) reminded the Conference that it would be the duty of the Drafting Committee to replace the words “ *actes visés* ” in the French text of paragraph 1 by “ *faits prévus* ”, as had been done in the case of previous articles. He also suggested that the whole of the first paragraph was really superfluous, in view of the full explanation of the duties of central offices given in Article 7.

Referring to paragraph 2, he suggested that the words “ *qui y serait* ” in the French text of the introductory sub-paragraph might well be omitted.

As regards the Japanese amendment to sub-paragraph (a), M. da Matta supported the proposal to insert the word “ illicit ” and also advocated the use of some more appropriate expression than “ necessary ” before the words “ investigations or operations ”.

In sub-paragraph (b), the word “ *précises* ” might suitably be replaced by “ *utiles* ”.

In general, M. da Matta commended the drafting of this article as superior to the drafting of the corresponding article in the Convention on Counterfeiting Currency, particularly in the use of the single generic word “ identity ” in sub-paragraph (b), instead of the list of particulars in the earlier Convention.

Dr. SCHULTZ (Austria) agreed with the proposals of the Japanese and Portuguese delegations.

Mr. DOWSON (United Kingdom) explained that the word “ illicit ” had been deleted by the Committee of Experts from various articles of the draft as its meaning had not been exactly defined. If it were decided to omit the word at all, it should be deleted everywhere. The other suggestions made by the Portuguese delegate might be referred to the Drafting Committee. As regards sub-paragraph (b), he suggested that the opening words might be amended to read : “ The fullest details which it has been able to obtain ”.

The PRESIDENT put the Japanese delegation’s amendment to the vote.

On a show of hands, the amendment was defeated by 6 votes to 5.

The Conference agreed to refer the suggestions of the delegates of Portugal and the United Kingdom relating to paragraph 2 to the Drafting Committee.

Article 8 was adopted at a first reading.

ARTICLE 9.

*The Advisory Committee on Traffic in Opium and Other Dangerous Drugs is requested to consider from time to time the question whether it is desirable that meetings of the representatives of the central offices of the High Contracting Parties should take place, in order to ensure, improve and develop international co-operation as provided for in the previous article and, where necessary, to give an opinion on the subject.*

The PRESIDENT said that amendments had been submitted by the Austrian and Japanese delegations.

*Amendment proposed by the Austrian Delegation.*<sup>2</sup>

“ To add to Article 9 a second paragraph to read as follows :

“ ‘ The organisation and supervision of a central international information office may form the subject of one of these Conferences.’ ”

<sup>1</sup> Document Conf.S.T.D.13.(a).

<sup>2</sup> Document Conf.S.T.D.31

*" Explanatory Note :*

" Article 15 of the International Convention for the Suppression of Counterfeiting Currency embodies exactly the same provision in its second sentence."

*Amendment proposed by the Japanese Delegation.<sup>1</sup>*

" To insert this article in the Final Act of the Conference."

M. NISHIMURA (Japan) pointed out that, as drafted, Article 9 did not constitute a contractual obligation so much as a recommendation addressed by the Conference to the Advisory Committee on Traffic in Opium and Other Dangerous Drugs. It would, therefore, be more appropriately placed in the Final Act of the Conference.

Dr. SCHULTZ (Austria) agreed that the draft article had more the form of a recommendation; but it implied, in substance, an obligation, as would be seen from a comparison with the text of Article 15 of the Counterfeiting Currency Convention, which read: ". . . the representatives of the central offices . . . should from time to time hold Conferences . . .". It was important that this duty of central offices to meet occasionally in conference should be laid down in the Convention, preferably in an article, or possibly in the Final Act. Conceivably, the solution might be found by embodying in an article the obligation of central offices to meet from time to time in conference and inserting a recommendation in the Final Act that the Opium Advisory Committee should consider the possibility of convening such Conferences.

M. CONTOMAS (Greece) and Phya RAJAWANGSAN (Siam) supported the Japanese delegation's amendment.

Mr. HARDY (India) also supported the Japanese delegation's proposal, particularly as it was unusual, in a formal article, to address a request to another organisation. As the Austrian delegate construed the draft article as implying a contractual obligation, and as he himself very much doubted the utility of such meetings and the practical possibilities of Governments' allowing their officials to attend them, he would much prefer to see the draft article deleted and a recommendation in the Final Act substituted.

Major COLES (United Kingdom) regarded Article 9 as tantamount to asking a League organisation to put a certain question on its agenda. But all the organs of the League had special machinery for this purpose; and the Opium Advisory Committee already included representatives of countries which possessed central offices, and could, if necessary, serve as a co-ordinating body. Any such recommendation should be inserted in the Final Act of the Conference and should be addressed, not to a League organ, but to the League of Nations generally. The United Kingdom delegation was therefore in favour of the Japanese amendment and against the insertion of Article 9 in the body of the Convention.

M. TELLO (Mexico) and M. BOURGOIS (France) supported the Japanese delegation's amendment.

Dr. SCHULTZ (Austria), in reply to the observations of the delegates of India and the United Kingdom, pointed out that a similar provision had been included in the Convention on Counterfeiting Currency, and two Conferences had already been held with very valuable results. The doubts expressed, therefore, as to the utility of such meetings were not fully grounded.

The sessions of the Opium Advisory Committee would hardly afford the opportunities desired, as the Committee only included a few representatives of national police organisations. In addition, the membership of the Committee was limited, whereas the Conferences to be convened under Article 9 would be attended by the heads of all national central offices.

Colonel SHARMAN (Canada), speaking as the head of the Canadian Narcotics Office, found that his present obligations as regards international conferences were quite onerous enough without any additions. The Opium Advisory Committee, he considered, was the proper body to decide when the representatives of central offices should be convened. Some countries were already represented on the Committee by such representatives, and others could always be added to delegations, if occasion arose. The Canadian Government would certainly not agree to participate in such Conferences as Article 9 would entail, and he therefore supported the Japanese delegation's amendment to transfer this article to the Final Act.

*On a show of hands, the Japanese delegation's amendment to Article 9 was carried by 16 votes to 3.*

<sup>1</sup> Document Conf.S.T.D.13(a).

The PRESIDENT assumed that, in drafting a recommendation for the Final Act on the basis of the draft article, account would be taken of the observations made during the present discussion.

*The President's suggestion was approved.*

Dr. SCHULTZ (Austria), speaking of the amendment tabled by his delegation, said that, if the Convention were to be fully effective, some central international organisation must be created to act as a link between the various national central offices. That was why the Austrian delegation's amendment suggested an international information office.

The duties of such an office would be to collect all information of value on the illicit traffic and traffickers, such as photographs, finger-prints, records of convictions and previous history of the individuals implicated. The office would place this information at the disposal of national central offices.

There was no intention of setting up a body to direct or control the work of national central offices; the international office would serve solely as an auxiliary, as a clearing-house, for all important information with regard to the illicit traffic. Without some such organisation, it would be impossible properly to discharge the tasks imposed by the present Convention. That was his own view as a technical expert and a practical worker for many years in this field.

The value of such a central organisation had already been recognised, as would be seen from the original French draft of the Counterfeiting Currency Convention and from the actual terms of Article 15 of that Convention. There was no need for detailed proofs that such an organisation was at least as essential in combating the illicit drug traffic as in combating counterfeit currency. The best proof that such a need existed was the fact that the police forces of various countries had of their own initiative set up an international bureau at Vienna under the auspices of the International Criminal Police Association.<sup>1</sup>

That bureau was purely provisional and semi-official, pending the creation of some official international central office. The International Criminal Police Association's draft for a Convention for the Suppression of the Illicit Traffic, prepared in 1931, contained a clause to that effect, identical with Article 15 of the Counterfeiting Currency Convention. The Sub-Committee to which the point had been referred had, to his great regret, struck out the clause, but had suggested that the subject might appropriately be raised at the diplomatic conference. The time had therefore come to discuss it.

When the first draft of the present Convention had been referred to Governments, the Austrian Government had suggested the insertion of a clause concerning an international central office, and the Swiss Government had made a similar recommendation.<sup>2</sup> Dr. Schultz therefore urged the Conference to accept his delegation's amendment, subject always to the decision just taken concerning the other part of the article. The question was one of principle. If no provision were made in the present draft Convention, the question was bound to recur later, as such a body would prove indispensable. The office did not need to be opened immediately: it would only be required after all the national central offices had started work. Meanwhile, the Special Bureau of the International Criminal Police Association would continue to discharge the same functions. Some final solution, however, must be found by embodying the draft Article 9 and the present amendment either in a formal article or in the Final Act.

Colonel SHARMAN (Canada) pointed out that, though Article 15 of the Convention on Counterfeiting Currency might be cited as a precedent for inserting a similar article in the draft Convention under discussion, it should be borne in mind that there were no organisations similar to the Opium Advisory Committee and its Seizures Sub-Committee in the case of the campaign against counterfeit currency. Those Committees centralised the information received on illicit traffic and circulated details of seizures made and trafficking detected to the various national organisations. He saw no need, therefore, for organising another central information office, and must oppose the amendment proposed by the Austrian delegation.

M. TELLO (Mexico) agreed with the delegate of Canada that it was superfluous to create international organisations in addition to the Opium Advisory Committee and the Seizures Sub-Committee already existing.

M. GORGÉ (Switzerland) explained that, though authorised by his Government to vote for the retention of Article 9, he realised, after hearing the arguments adduced in support of the Japanese delegation's amendment, that the wording of the article was open to legal objections and that it would be more suitably inserted as a recommendation in the Final Act.

In those circumstances, he was entitled to point out to his colleagues that the Austrian delegation's amendment referred only to the possibility of setting up a central international

<sup>1</sup> See document Conf.S.T.D.27.

<sup>2</sup> Document Conf.S.T.D.1, Annex 2.

information office as the result of a conference of national central offices. The Austrian delegate had clearly shown the value of such an international information bureau; and, though M. Gorgé fully agreed that, in connection with the opium activities of the League, there were, if anything, too many organisations, he could see no objection to authorising police officials to meet and consider the possibility of organising the proposed central bureau.

He would, however, recommend the Austrian delegation to delete from the text of its proposed second paragraph the words "and supervision", as the omission of those words might remove some of the objections felt to the amendment as a whole.

M. TREBICKI (Poland) also found the word "supervision" in the Austrian delegation's amendment somewhat vague. Did it mean that the national central offices would supervise the working of the central information office to be set up? Even though that clause was reproduced from Article 15 of the Convention on Counterfeiting Currency, the wording might be clearer.

Dr. Hoo Chi-Tsai (China) agreed with Colonel Sharman.

The draft Convention had been compared, at many points, with the Convention on Counterfeiting Currency. In this particular case, however, there was an essential difference between the two Conventions. For the suppression of the drug traffic, there were already in existence organs which were accomplishing useful work. In the matter of counterfeiting currency, on the other hand, no special organ had been set up within the framework of the League, so that it had been natural to provide for the creation, if necessary, of a central information office.

If taken in its most general sense, Article 8 of the draft Convention must be regarded as duplicating Article 23 of the 1931 Convention. That article provided that the contracting parties would "communicate to each other, through the Secretary-General of the League of Nations, as soon as possible, particulars of each case of illicit traffic discovered by them . . .". It went on to specify the kind of particulars which should be given, and requested in conclusion "any other information which would assist in the suppression of illicit traffic". For his part, however, Dr. Hoo understood that Article 8 was to be interpreted in a more special sense, as relating to information of an urgent character which one contracting party might wish to communicate directly to the other contracting party specially concerned.

With regard to the annual reports mentioned in Article 13 of the draft Convention, it should be made quite clear whether the reference was to the annual reports already provided for under the previous Conventions or whether a different type of report was intended. In Dr. Hoo's view, the annual reports might, in the future, contain all the information required by the present Convention; to request further special reports would only add to the work of the different administrative departments, which the Convention was meant to facilitate.

Mr. HARDY (India) had listened with great interest to Dr. Schultz' arguments in support of his proposal, but he entirely agreed with Colonel Sharman's view.

Ever since the nations had determined to co-operate with each other in suppressing the drug traffic, all liaison between them had been effected through the League. The Advisory Committee to the Council had a special Seizures Sub-Committee which examined each year a vast quantity of reports on seizures and other information concerning international traffickers. The Sub-Committee held its meetings at regular intervals, and provided an excellent opportunity for exchanges of views between the representatives of the countries specially concerned. If an entirely different international body were now to be set up, outside the framework of the League, the majority of Governments would probably be unwilling to prepare two separate sets of reports. In that case, the Advisory Committee would no longer be in touch with the details of the illicit traffic, with the result that the value of the advice it could give the Council on narcotic drug questions in general would be greatly diminished. He was compelled, therefore, to oppose the amendment.

M. DA MATTA (Portugal) strongly supported the Austrian delegate's proposal. His delegation had voted in favour of retaining Article 9 in the main body of the Convention in preference to transforming it into a recommendation, largely on the ground that there were articles containing identical provisions in the Conventions on Counterfeiting Currency and on Terrorism.

The Chinese delegate had said that the situation in regard to the traffic in drugs was a special one, and had argued that, in the case of counterfeiting currency, the creation of an international organisation was indispensable. But that was equally true in the case of terrorism; and yet the draft Convention on that subject, which contained an article in very much the same terms as the article under discussion, made no provision of that kind.

As the Conference was aware, there was already a central information office in Austria dealing with questions of counterfeiting currency. It was not an official body; but nevertheless, when banks of issue applied to it for information, that information was always available, whereas, when the banks applied to other sources, the particulars given were often inaccurate and incomplete. Why could not a similar office be set up to deal with opium questions? He thought that at least there could be no objection to adopting a recommendation to this effect in the Final Act.

M. DE VELICS (Hungary) agreed with M. da Matta. The Conference was only asked to approve a recommendation. There was no question of the new office taking over any task hitherto carried out by the Advisory Committee: it was only intended that the two bodies should work in close co-operation. It had been proposed that the Advisory Committee should consider whether meetings of representatives of the different national offices should take place, in order to improve and develop international co-operation. Surely, therefore, there could be no objection to creating an international central office if that were held to be necessary as a result of one of those meetings. For the purpose of achieving the main object of the Convention—the suppression of the illicit traffic—the widest possible co-operation was needed.

Dr. SCHULTZ (Austria) thanked his colleagues for the interest they had shown in his proposal. Even those speakers who had opposed his amendment had helped greatly in throwing fresh light on the subject. He owed a special debt of gratitude to those who had supported his proposal, and particularly to the delegates of Portugal, Poland, Switzerland and Hungary.

There had been a good deal of misunderstanding of his proposal. He wished in the first place to point out to the Mexican delegate what he had himself emphasised. It was by no means intended that the international office should supervise the work of the various national offices. He had wished to make it perfectly clear that the international information office was only to be an auxiliary, its aim being merely to provide the national offices with such information as they might require.

Dr. Schultz was surprised that Colonel Sharman, in his observations, had overlooked the existence of such police questions as the collecting of finger-prints and photographs and the keeping of records. Colonel Sharman had referred to the work of the Secretariat. Dr. Schultz also attached the greatest importance to that work; but he thought it would be admitted that the Secretariat was not competent to deal with police matters such as those he had just mentioned. The question had once been raised in the Advisory Committee whether a black list should be established, documented by finger-prints, etc.; but it was decided that such work would be inappropriate to the Secretariat. Seeing that police questions, in the real sense of the term, could not be referred to the League, he failed to understand the attitude of those who, while, on the one hand, calling for police action, did not wish, on the other hand, to allow the police to have instruments of which they were in need.

The word "supervision" in his amendment had been misunderstood. The word occurred in the phrase he had reproduced from Article 15 of the Convention on Counterfeiting Currency; it did not refer to supervision exercised by the international office, but to supervision exercised over that office. That, however, was a verbal matter which could be left to the Drafting Committee.

He wished again to urge the importance of his proposal and to recommend it to the favourable consideration of the Conference.

M. TELLO (Mexico) wished to make it clear that he had approved the recommendation giving the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs the right to consider from time to time the desirability of convening meetings of representatives of central offices. He only objected to the creation of a new international organ to be put in charge of this matter, because he considered that conflicts might arise, in the future, in the matter of competence.

Dr. Schultz had said that there were certain cases with which the police dealt exclusively. M. Tello, while expressing his agreement with Dr. Schultz, considered that, in such cases, nothing prevented the Governments represented on the Advisory Committee from delegating to those meetings experts in criminal police matters. Even at the present time, some States were represented on the Advisory Committee by experts of that kind whose qualifications and experience were of the utmost value to the Committee. M. Tello desired to lay special stress on the particular debt of thanks that the Committee owed, in that connection, to the valuable assistance of Dr. Schultz.

M. BOURGOIS (France) took his stand on practical grounds; he did not desire expenditure or new organisations. The Advisory Committee already had its Seizures Sub-Committee, and, in addition, there were the Supervisory Body and the Permanent Central Board. He did not think it desirable to contemplate the creation of a new organ. The police of the countries specially concerned had established frequent and regular collaboration, and he had never heard it suggested by the competent French departments that any new organisation was needed. The present organisation was satisfactory and, for his part, he would be content to retain it.

Dr. SCHULTZ (Austria) said it appeared that certain members were of opinion that a central police organisation was not needed. He could only say that the work of the International Criminal Police Commission had shown the need for centralising police information. That Commission was a body of experts. If, however, there was a difference of opinion on this subject, it would be superfluous for him to add anything further.

*On a vote being taken on the Austrian amendment, for inclusion when drawing up Article 9 in the form of a recommendation, 7 delegations voted for and 12 against the amendment.*

*The Austrian amendment was rejected.*

# ARTICLE 10.

1. *The transmission of letters of request relating to the offences referred to in Article 1 shall be effected :*

(a) *By direct communication between the competent authorities of each country or through the central offices, or*

(b) *By direct correspondence between the Ministers of Justice of the two countries or by direct communication from another authority of the country making the request to the Minister of Justice of the country to which the request is made, or*

(c) *Through the diplomatic or consular representative of the country making the request in the country to which the request is made. This representative shall send the letters of request direct to the competent judicial authority or to the authority appointed by the Government of the country to which the request is made and shall receive direct from such authority the papers showing the execution of the letters of request, or*

(d) *Through diplomatic channels.*

2. *In cases (a), (b) and (c), a copy of the letters of request shall always be sent simultaneously by the diplomatic representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made or to such other authority as may be indicated by him.*

3. *Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.*

4. *Each High Contracting Party shall notify to each of the other High Contracting Parties the method, or methods, of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.*

5. *Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.*

6. *The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.*

7. *Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws or to execute letters of request otherwise than within the limits of their laws.*

M. DA MATTA (Portugal) wished to ask the Chairman of the Committee of Experts why a fourth method had been added to those specified in the Counterfeiting Currency Convention for the transmission of letters of request. In the case of counterfeiting currency, the Mixed Committee entrusted with the duty of drafting the Convention had desired to expedite and simplify the procedure with regard to letters of request; to that end, it had at first intended only to provide for the two methods indicated in sub-paragraphs (a) and (b) of paragraph 1 of the article now under discussion. The question had then been raised whether letters of request might not also be transmitted through diplomatic channels. It had been argued, however, that that method would not be sufficiently rapid. After a very long discussion, the Committee had accepted, as a compromise, the method indicated in sub-paragraph (c) of paragraph 1 of the present article. Were there any essential reasons for adding the method "through diplomatic channels"?

With regard to sub-paragraph (a) of paragraph 1, M. da Matta agreed that the provision for "direct communication between the competent authorities" was an improvement on that in the Convention on Counterfeiting Currency, which only spoke of the judicial authorities. The competent authorities might be administrative authorities. In the Convention on Counterfeiting Currency, however, that phrase had been preceded by the word "preferably". It had been intended in that case to graduate the three methods in order of preference, whereas, in the present article, all four methods seemed to be on the same footing.

As regards sub-paragraph (c) of paragraph 1, M. da Matta thought the phrase "direct to the competent judicial authority or to the authority appointed by the Government of the country to which the request is made" might give rise to misunderstanding. It seemed to imply that in this particular matter the Government could appoint an authority other than a competent authority. It would be better to say "direct to the authority appointed by the Government of the country".

Paragraph 2 provided that a copy of letters of request should be sent to the Minister for Foreign Affairs or such other authority as might be indicated by him. In some countries, however, it might not be the duty of the Foreign Minister to indicate that authority. It would be better if the phrase were to read: "to the Minister for Foreign Affairs of the country to which application is made or to such other authority as may be indicated by the Government concerned".

Paragraph 3 reproduced the provision of the Convention on Counterfeiting Currency that letters of request should "be drawn up in the language of the authority making the request". M. da Matta believed that that provision was giving rise to difficulties in connection with the application of the Convention. It would be better to adopt the provision contained in the Convention on Civil Procedure, that the letters of request should be drawn up either in the language



of the authority making the request or in a language agreed upon by the two Governments concerned.

He would point out in connection with paragraph 6 that certain Governments held that expense incurred in the execution of letters of request should be borne by the applicant country. In that case also, it would be better to adopt the relevant provision in the Convention on Civil Procedure—a Convention which had been signed and ratified by several States.

*The continuation of the discussion was adjourned to the next meeting.*

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## TWENTY-SECOND MEETING.

*Held on Monday, June 22nd, 1936, at 3.30 p.m.*

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*President: M. LIMBURG.*

### 29. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>1</sup> (continuation).

#### ARTICLE 10 (*continuation*).

M. NISHIMURA (Japan), replying to a question asked at the previous meeting by M. da Matta,<sup>2</sup> explained the circumstances under which the Committee of Experts had provided for the transmission of letters of request through diplomatic channels, as it was he who had asked for sub-paragraph (*d*) to be inserted in the first paragraph of Article 10.

At the ninth meeting of the Committee of Experts, the Japanese representative had pointed out that Japanese law did not allow of letters of request being transmitted except through the Ministry for Foreign Affairs at Tokio. He had further pointed out that the corresponding article of the Counterfeiting Currency Convention (Article 16) did not provide for the transmission of letters of request through diplomatic channels, and had thus prevented the ratification of the Convention by Japan. For those reasons, the Committee of Experts had provided for the fourth method of transmission given in sub-paragraph (*d*) of paragraph 1.

The delegate of Japan added that Japanese law was categorical, and the Government had no intention of changing national legislation on that point. It would be a pity if Japan were prevented from ratifying the present Convention for a reason which was only of secondary importance to the other contracting parties. Moreover, the transmission of letters of request through diplomatic channels was already provided for in Article III of the Convention on Obscene Publications of September 12th, 1923. He therefore asked for sub-paragraph (*d*) to be retained; if it were deleted, Japan would have to enter a reservation regarding Article 10.

M. CONTOUMAS (Greece) considered M. da Matta's remarks made at the previous meeting on Article 10 very sound, and hoped that the Conference would not object to their being referred to the Drafting Committee to be taken into consideration when the Committee was drafting the final text of this article, since his remarks bore more particularly on questions of form.

M. DA MATTA (Portugal) thought that he had found a text which would satisfy the Japanese delegation. He held, on the one hand, that Article 10 should only make provision for three ways of transmitting letters of request. On the other hand, the delegate of Japan had declared that transmission through diplomatic channels was the only form of transmission acceptable to his country, on account of its national legislation. M. da Matta would therefore suggest deleting sub-paragraph (*d*) of paragraph 1, in order to confirm the principle that there were only three ways of transmitting letters of request—namely, those given in sub-paragraphs (*a*), (*b*) and (*c*). To meet the Japanese delegation's views, however, he proposed the addition of a paragraph laying down that:

“Each contracting State may, by a communication addressed to the other contracting States, express its desire that the letters of request to be executed on its territory should be sent to it through diplomatic channels.”

This provision was contained in Article IX of the Civil Procedure Convention of 1905. If that solution were adopted, the three ordinary and general ways of transmitting letters of request would be retained and, at the same time, satisfaction would be given to the Japanese delegation.

M. GORGÉ (Switzerland) did not propose to express an opinion on the remarks made by M. da Matta at the previous meeting. They merited very close examination by the Drafting Committee. He considered that Article 10 needed to be revised, but the questions involved were extremely complicated and had better not be discussed in plenary session, but referred to the Drafting Committee.

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<sup>1</sup> Document Conf.S.T.D.2, Annex 3.

<sup>2</sup> See page 134.



With regard to paragraph 2, which provided that a copy of the letters of request should always be sent by the "diplomatic representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made", the delegate of Switzerland pointed out that the country making the request would not always have a diplomatic representative on the spot. There were small States which did not have a diplomatic representative in every capital. It should be possible for the letter of request to be sent direct by the Government making the request to the Government to which application was made. Accordingly, the words "by the Government" might be inserted in paragraph 2, which would then read as follows:

"In cases (a), (b) and (c), a copy of the letters of request should always be sent simultaneously by the Government or by the diplomatic representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made, or to such other authority as may be indicated by him."

M. NISHIMURA (Japan) said that the Japanese delegation accepted the Portuguese delegate's proposal.

The PRESIDENT suggested that the Conference should refer the technical remarks of M. da Matta and M. Gorgé to the Drafting Committee, but should adopt the principle underlying M. da Matta's proposal, as accepted by the Japanese delegation, to the effect that sub-paragraph (d) of paragraph 1 be replaced by a paragraph taken from a Convention which had proved its value—that was to say, by the provisions of Article IX of the 1905 Convention on Civil Procedure.

*The President's proposals were adopted.*

*Article 10 was adopted at a first reading.*

#### ARTICLE 11.

*The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that party's attitude on the general question of criminal jurisdiction as a question of international law.*

*Article 11 was adopted at a first reading.*

#### ARTICLE 12.

*The present Convention does not affect the principle that the offences referred to in Article 1 shall in each country be defined, prosecuted and punished in conformity with the general rules of its domestic law.*

The PRESIDENT observed that the French delegation, which had submitted the following amendment, had now withdrawn it:

#### *Amendment proposed by the French Delegation.<sup>1</sup>*

"To substitute for Article 12 the following text:

"'The present Convention does not affect the principle whereby the definition of the offences dealt with therein and the penalties applicable thereto, their prosecution and trial are matter in each country for the general rules of its internal laws, without the said offences ever being allowed impunity. Nor does it affect the right of the High Contracting Parties to deal as they think fit in their internal laws with exemption and pardons and amnesties.'"

The PRESIDENT recalled that the words "*actes visés*" in the French text would be replaced by the words "*faits prévus*", for the sake of a uniform phraseology in the Convention.

Mr. DOWSON (United Kingdom) regretted that the French amendment had been withdrawn, for he thought it a useful one. It would be well to make clear the meaning of Article 12 in the way the French delegation had suggested. He wished, therefore, to put forward this same proposal on his own account. In the Convention for the Suppression of Counterfeiting Currency, it had been held necessary to make clear the meaning of Article 18, the provisions of which corresponded to those of Article 12 of the present Convention, by inserting in the Protocol an interpretation which stated that it was understood:

"That the Convention does not affect the right of the High Contracting Parties freely to regulate, according to their domestic law, the principles on which a lighter sentence or no sentence may be imposed, the prerogative of pardon or mercy and the right to amnesty."

Since this interpretation had been necessary in the Convention on Counterfeiting Currency, he proposed, in order to make clear the scope of Article 12, to add to that article the following sentence, which had originally been proposed by the French delegation:

"Nor does it affect the right of the High Contracting Parties to deal as they think fit in their internal laws with mitigating circumstances and pardons and amnesties."

<sup>1</sup> Document Conf. S.T.D. 18 (a).

As no question of principle was involved, there ought to be no difficulty in agreeing to this addition, and it might be referred to the Drafting Committee.

M. DA MATTA (Portugal) approved this proposal. He was not clear, however, whether Mr. Dowson wished to add a sentence to this effect to Article 12 itself, or to insert an interpretation in the Final Act.

Mr. DOWSON (United Kingdom) explained he would prefer Article 12 to be worded as the French delegation had proposed, omitting, however, at the end of the first sentence, the words "without the said offences ever being allowed impunity", and making a change of form in the second sentence of the English text by inserting the words "mitigating circumstances" in the list of matters specifically mentioned in that sentence. The article would therefore read as follows :

"The present Convention does not affect the principle whereby the definition of the offences dealt with therein and the penalties applicable thereto, their prosecution and trial are matter in each country for the general rules of its internal laws. Nor does it affect the right of the High Contracting Parties to deal as they think fit in their internal laws with exemption, mitigating circumstances, pardons and amnesties."

Instead of inserting an interpretation in the Final Act, Mr. Dowson would prefer, by means of this addition, to make the text of Article 12 itself explicit.

M. DA MATTA (Portugal) agreed with Mr. Dowson's proposal. As regards, however, the second sentence which it was proposed to add, the recognition accorded to mitigating circumstances varied in the different penal codes. Some countries took into account mitigating circumstances in the narrow sense of the term, while others included considerations of legitimate defence. A form of words should be adopted therefore which would cover all those different systems, and this task might be entrusted to the Drafting Committee.

The PRESIDENT considered, as a jurist, that the proposed amendment would completely ruin the article. He pointed out that Article 18 of the Convention for the Suppression of Counterfeiting Currency, which was similar to Article 12 of the present Convention, did not contain that addition. It was an innovation introduced into the draft Convention for the Prevention and Punishment of Terrorism, and he failed to see what purpose it served. None of the general rules of the penal law of the contracting countries was affected: the offences were defined, prosecuted and punished in conformity with domestic law. If the necessity for an addition were admitted, the result was bound to be unsatisfactory. There could obviously be no question of enumerating all the rules which were not affected by the Convention, such as the rule to the effect that children under 18 could not be punished; that a case of *force majeure* must be proved either by the accused person or by the public prosecutor, according to the different laws; rules concerning prescription, and, in short, everything that was included in penal doctrine in the general chapters. It was precisely for the purpose of avoiding that enumeration that the article in the revised draft Convention simply laid down the principle that the general rules of the domestic law of each country should not be affected.

Moreover, the choice of rules expressly mentioned in the proposed addition did not appear to be appropriate: the right of pardon was in most countries the exclusive prerogative of the head of the State, and, as a rule, in the case of an amnesty a special law was required. Those rights were not of course in any way affected by the Convention. In short, any addition to the text of Article 12 of the revised draft Convention was harmful, from both a technical and a legal standpoint.

The President asked Mr. Dowson whether he would agree to his proposed addition being inserted in the Final Act, in accordance with the procedure followed in the case of the Convention for the Suppression of Counterfeiting Currency.

M. CONTOUMAS (Greece) also thought that nothing should be added to Article 12 of the revised draft Convention. He even went further and considered that the position would be the same if that article did not exist, since all matters not expressly dealt with in the Convention were governed by domestic law. Nevertheless, by analogy with the Convention for the Suppression of Counterfeiting Currency, the Committee of Experts had desired to insert the provisions to be found in Article 12, but the general principle laid down therein was sufficient.

Moreover, it should be pointed out that, in the Convention for the Suppression of Counterfeiting Currency and in the draft Convention for the Punishment of Terrorism, in which the proposed clause had been inserted, there was a phrase reading as follows: "subject to the act in question not being allowed to escape punishment", which might overrule the mitigating circumstances, etc., provided for in domestic law. But, as that phrase was not included in the present Convention, there was no need to insert the proposed addition. The Greek delegate was accordingly opposed to any addition to Article 12, and even to the insertion of an interpretation in the Final Act. He added that Article 12 of the revised draft Convention was perfectly clear and the text was an improvement on the corresponding provisions in the previous Conventions.

Mr. DOWSON (United Kingdom) recognised the force of the arguments advanced by the President in regard to Article 12. It was a question on which eminent jurists were divided, and for that reason in the draft Convention for the Suppression of Terrorism a clause had been inserted

similar to that which the United Kingdom delegate proposed should be adopted for Article 12 of the present Convention. The object of his proposal had already been stated, and he suggested that the question should be referred to the Drafting Committee, by which it could speedily be settled.

The PRESIDENT asked Mr. Dowson whether he proposed to allow the Drafting Committee the right to reserve the interpretation of Article 12 for the Final Act if it considered this expedient.

Mr. DOWSON (United Kingdom) replied that it was for the Drafting Committee to decide whether an interpretative clause should be inserted.

The PRESIDENT said that the question would be referred to the Drafting Committee, which would be free to propose the insertion of an interpretative clause in the Final Act.

*Subject to this reservation, Article 12 was adopted at a first reading.*

#### ARTICLE 13.

*The High Contracting Parties shall communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and shall forward to the Secretary-General an annual report on the working of the Convention in their territories.*

The PRESIDENT said that an amendment to this article had been submitted by the United States delegation.

*Amendment proposed by the United States Delegation.<sup>1</sup>*

"To delete the words: 'shall forward to the Secretary-General'."

Mr. ANSLINGER (United States of America) said that the United States delegation had made its proposal with a view to the adoption, for the communication of the annual report, of the same system as that employed for the communication of laws and regulations. In that connection, the drawing-up of a special annual report might perhaps be unnecessary. He suggested, therefore, on behalf of the United States delegation, that a special chapter on the working of the present Convention should be added to the annual report provided for in the 1931 Convention.

Colonel SHARMAN (Canada) agreed with the United States delegate, but doubted whether the second part of his proposal was necessary. He pointed out that the basic drafts for the first and second consultations provided that:<sup>2</sup>

"The High Contracting Parties who are parties to the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs, signed at Geneva on July 13th, 1931, may include the information concerning the working of the present Convention in the annual report provided for under Article 21 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs."

The Canadian Government had stated in its reply<sup>3</sup> that it unreservedly approved the principle that the annual report on the working of the Convention should be included in the annual report provided for under Article 21 of the 1931 Convention. That clause appeared to have been tacitly accepted by the other Governments. Consequently, if it was understood that there was no need to draw up two annual reports and that it was sufficient to add a special chapter to the annual report provided for in the 1931 Convention, the amendment proposed by the United States delegation was unnecessary.

The PRESIDENT thought that the United States amendment was logical. It meant that the contracting parties would communicate to each other an annual report on the working of the Convention.

M. CONTOUMAS (Greece) considered that the amendment proposed by the United States delegation was reasonable, but that attention should be drawn to the consequences it would have from the point of view of the Secretariat. The Secretary-General would receive a report and would be obliged to communicate it in its entirety to all Governments. That would entail a large amount of work and additional expense, as the reports were usually very long. To avoid that extra work and expense, the Secretariat should be allowed simply to communicate a summary of the reports.

With reference to the observation made by the Canadian delegate, M. Contoumas added that it was understood that, since the second paragraph of the initial drafts of Article 13 had been omitted, Governments which considered themselves bound by the 1931 Convention and by the present Convention would have the right to send two separate annual reports or to add a special chapter to the annual report provided for in the 1931 Convention.

M. BOURGOIS (France) supported the Greek delegate's observation and added that, not only were the annual reports themselves usually long, but other documents were often appended to

<sup>1</sup> Document Conf.S.T.D.7(a).

<sup>2</sup> Document Conf.S.T.D.1, Annex 2.

them. For instance, he proposed to add to the French annual report a volume of at least 452 pages dealing with anti-narcotics legislation. That volume would be very useful to the Advisory Committee, but was too expensive for it to be possible to send a copy to each Government.

Dr. Hoo Chi-Tsai (China) thought that all the members of the Conference were agreed that the annual report on the working of the present Convention should be treated in the same way as the report provided for under Article 21 of the 1931 Convention. The Advisory Committee had decided, at its last session, that the Secretariat would send to all Governments the annual reports on the working of the 1931 Convention. It would therefore be reasonable to deal with the report on the working of the present Convention in the same way. As the result of that decision, not only the reports, but also their annexes, would have to be sent to all Governments parties to the 1931 Convention.

M. DE VELICS (Hungary) was anxious to know the Secretariat's views on M. Contoumas' observation because, as a member of the Fourth Committee, he would be called upon to vote on the request for supplementary credits which would be submitted if the proposal now under discussion entailed additional expenditure.

The PRESIDENT replied, on behalf of the Secretariat, that a distinction should be made between the annual report provided for in the 1931 Convention and the report on the working of the present Convention. If the annual report were accompanied by annexes, it would not be necessary to send all those annexes to the Governments. The Secretariat would simply keep the documents accompanying the reports at the disposal of the parties to the Conference who might wish to consult them.

M. DELGORGE (Netherlands) was unable to support the amendment proposed by the United States delegation. The annual report furnished by the Netherlands was a typewritten document of which it would be difficult to send a copy to each Government. Moreover, as that report was drawn up in Dutch, it might not be of much use to the other parties to the Convention.

*On being put to the vote, the United States amendment was adopted by 11 votes to 9.*

*Article 13 was adopted at a first reading.*

#### ARTICLE I (continuation).

##### *Amendment proposed by the Egyptian Delegation to supplement Article 1.<sup>1</sup>*

The PRESIDENT invited the Egyptian delegate to comment on his amendment, which was intended to supplement Article 1. He understood that the Egyptian delegate attached no particular importance to the place where that amendment, if adopted, would finally be inserted.

M. GORRA (Egypt) submitted his amendment, which read as follows :

"The High Contracting Parties which possess an extra-territorial jurisdiction in the territory of another State party to the present Convention undertake, if the local courts cannot inflict penalties on their nationals in that territory in respect of breaches of the rules laid down in this Convention, to enact the necessary legislative provisions to enable their extra-territorial courts to apply the penalties provided in the local legislation."

The Egyptian delegate said that he had already moved that amendment.<sup>2</sup> He had proposed it incidentally as a new paragraph to Article 1. Under paragraph 2 of that article, the contracting parties agreed "to make the necessary legislative provisions for *severely punishing*" the acts enumerated therein. The first time Article 1 had come up for discussion, he had had the impression that the penalties which certain States proposed to enact would be much milder than the penalties promulgated in Egypt. He had therefore considered it essential that the Conference should state that in any case in Egypt, no matter what provisions States might make in their territories, the consular courts of the Capitulation Powers in that country should impose penalties equivalent to the penalties laid down by the local—that was to say, the Egyptian—law.

A few explanations were now required. In the memorandum communicated by the Egyptian Government on July 13th, 1935,<sup>3</sup> that Government had suggested that an article should be added to the Convention under which "the High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake, in cases where the rules of this Convention cannot be enforced by the local courts as regards their nationals in such territory, to impose on the latter the penalties laid down in their national legislation for any acts contrary to the provisions of the present Convention".

<sup>1</sup> Document Conf.S.T.D.15.

<sup>2</sup> See page 84.

<sup>3</sup> Document Conf.S.T.D.1, Annex 2.

According to that text, the French consular courts, for instance, would impose on French nationals in Egypt the penalties laid down by French law. The same applied in the case of the other countries possessing extra-territorial jurisdiction.

The amendment had been worded in that way on the understanding that the "severe penalties" laid down in Article 1, would be more or less equivalent to the penalties already imposed by Egyptian law. If there was any doubt about that, it would be removed by the following paragraph of the communication from the Egyptian Government reading as follows :

It is essential to Egypt that these words should appear in the Convention, for this change would enable offenders who are nationals of the Capitulation Powers to be dealt with in Egyptian territory on the same footing as nationals of the country and foreigners amenable to the national courts."

The question was in fact of such importance from the Egyptian point of view that M. Gorra had received definite instructions from his Government to press for the adoption of those provisions. As Dr. Hoo Chi-Tsai had stated, some foreigners in Egypt were not amenable to consular jurisdiction and were tried by the Egyptian courts and punished in accordance with the penalties laid down by the domestic law. The meaning of the Egyptian proposal was therefore quite clear. All persons residing in Egypt, whether they were foreigners and nationals of the Capitulation Powers or not, or Egyptians, would be subject to the same penalties, which were severe.

In the course of the discussion, he had noted that the penalties provided for by the contracting parties would not be "very severe". He had then drawn up on his own initiative the text of the present amendment, in which he had endeavoured to make the point quite clear. He had kept the first part of the original Egyptian proposal and had also suggested that the Capitulation Powers should undertake "to enact the necessary legislative provisions to enable their extra-territorial courts to apply the penalties provided in the local legislation". It would be seen that, in the case of narcotics offences, Egypt was not asking for a free hand to prosecute the offenders herself and to punish them in accordance with Egyptian law, but only that the consular courts should themselves prosecute their nationals and apply to them the same penalties as were imposed in Egyptian territory on Egyptians and foreigners not nationals of the Capitulation Powers. The consular courts would thus continue to be responsible for the prosecution and punishment of such offences.

M. Gorra thought that, in view of those explanations, his amendment could not fail to meet with the Conference's approval, as the latter would obviously be unwilling to discriminate between foreigners who were nationals of the Capitulation Powers, on the one hand, and other foreigners and Egyptians on the other, or to intimate that the penalties which would thus be imposed were too severe. On the contrary, the delegations had met for the purpose of ensuring that severe penalties were imposed.

He would say no more for the moment, but would await the observations on his amendment and reply to them as a whole.

Mr. Dowson (United Kingdom) said that he was in sympathy with the idea underlying the amendment as explained by M. Gorra. Nevertheless, the actual proposal appeared to him to be quite unacceptable. In short, it might be said that the whole proposal rested on the application by the consular courts to their nationals of the penalties laid down by Egyptian law. In the case of Egypt, those penalties might be the same as the penalties provided for under British law for the purpose of giving effect to the Conventions on narcotics, and the penalties thus imposed on British subjects enjoying extra-territorial rights might be equivalent to the penalties imposed on the Egyptians themselves.

That would not be the case, however, with all the capitulation countries. In China, for instance, where extra-territorial jurisdiction existed, the domestic law provided for the death penalty in cases of infringements of certain provisions of the narcotic laws. That fact alone would make the Egyptian delegate's proposal quite unacceptable. All that the United Kingdom delegation could do would be to accept an article which its Government had already accepted and which was included in the Arms Convention. The article in question was Article 30 of the 1925 Convention for the Supervision of the Trade in Arms, which read as follows :

"That High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake in cases where the rules of this Convention cannot be enforced by the local courts as regards their nationals in such territory to prohibit all action by such nationals contrary to the provisions of the present Convention."

The only provision acceptable to the United Kingdom Government would be an article on the above lines. It was obvious that such a provision was different from the present Egyptian proposal, under which penalties provided in the domestic law of Egypt would *ipso facto* be applied in the consular courts to the nationals of the Capitulation Powers.

In short, the present amendment was unacceptable to the United Kingdom delegation, which would be prepared to examine and accept an amendment based on the text of Article 30 of the Convention on the Trade in Arms.

M. CONTOUMAS (Greece) began by stating that Greece had fortunately not had to suffer so much as Egypt from the narcotics scourge. It was for that reason that the penalties laid down by Greek law concerning the drug traffic had for a long time been regarded by the Egyptian Government as not sufficiently severe in the case of narcotics offences committed in Egypt by Greek nationals. The Greek consular courts had applied the national law, but its effects had not

been considered sufficiently rigorous. The Greek Government, out of friendship for Egypt—the two countries were bound by very strong ties—had been anxious to contribute to the anti-narcotics campaign undertaken by the Egyptian Government, and, to meet the latter's wishes, had enacted some years ago a special law, which was exclusively applied by the Greek consular courts in the case of narcotics offences committed by Greek nationals in Egypt. The penalties provided under that law were much more severe than those laid down by the domestic law.

M. Contoumas would add that the Egyptian Government had expressed its gratitude to the Greek Government for that mark of friendship and understanding of the special situation of Egypt. He had desired to recall that fact so that he might feel more at liberty to criticise the Egyptian amendment.

If he had rightly understood that amendment as commented on by M. Gorra, its effect would be to encroach upon the capitulations system as it was operating to-day in Egypt. M. Contoumas doubted whether the delegations had met for the purpose of contemplating the total or partial abolition of the capitulations system peculiar to Egypt. The Conference had a very different object in view: to suppress and punish severely the illicit traffic. There might be certain countries which had abolished the capitulations system and got on very well without it. That was quite possible, but the Conference was not called upon to deal with that question, which was quite outside the scope of its work.

The Egyptian Government had adduced as a precedent the provision in the Convention on the Trade in Arms, but that precedent confirmed a principle which was contrary to that underlying the Egyptian amendment. Under Article 30 of the Convention on the Trade in Arms, the contracting parties undertook to extend the application of their domestic law to their nationals in Egypt, which was a confirmation of the capitulations rule, whereas the Egyptian amendment contemplated an entirely different system.

Within the limits of the jurisdiction of the consular courts, only one law was applicable: the domestic law of the countries under whose authority those courts were placed. To compel them to apply the Egyptian law would be to renounce, in the case of narcotics offences, the application of the capitulations system, which would continue to be valid in Egypt.

The reasons for the Egyptian amendment were, M. Contoumas thought, to be found in the communication from the Egyptian Government of July 13th, 1935, in which it was stated that: <sup>1</sup> "The Egyptian Government feels that the Convention cannot allow diverse and inadequate penalties to be imposed in the territory of one contracting State . . . when it is endeavouring to do away with such a state of affairs in all countries signatories of the Convention".

Assuming that the Egyptian amendment was accepted, "diverse" penalties would then be imposed, because it was by no means certain that all the countries which still benefited by the capitulations system in Egypt would be bound by the present Convention, so that the law applicable by the contracting parties would differ from that applicable by the non-signatory States.

The main argument appeared to be, however, that the penalties would be "inadequate". It should not be forgotten that the States signatories of the present Convention had undertaken to punish severely the offences in question. Penalties would not therefore be inadequate so long as the consular courts applied their domestic law, which would be severe, as account would have been taken of the international obligation assumed under the Convention.

The Egyptian Government's first proposal had already been examined by the Committee of Experts, which, if M. Contoumas remembered rightly, had rejected it on the ground that it was incompetent to deal with it. It had been pointed out that this question went beyond the scope of the Conference and should be settled, together with the whole problem of capitulations, if that problem were raised by Egypt. In the original text, as in the Convention on the Trade in Arms, the basic principle of the capitulations system—that was to say, application of the law of the country under whose authority the consular courts were placed—was confirmed. That was something altogether different from M. Gorra's present proposal.

In the Committee of Experts, M. Contoumas had agreed, as Mr. Dowson had done, that the question did not come within the scope of the present proceedings. To-day, like the United Kingdom delegate, M. Contoumas was in a position to state that a proposal which, like the first Egyptian proposal, was designed to compel the contracting States which still benefited by the capitulations system in Egypt to apply the domestic law to their nationals in that country might possibly be considered.

Dr. Hoo Chi-Tsai (China) strongly supported the Egyptian delegation's amendment and had nothing to add to M. Gorra's arguments. In the case of China, the adoption of that amendment would make the National Government's task of combating the narcotic scourge possibly fifty per cent easier. What made that task more complicated at present was the fact that a large number of foreigners enjoying extra-territorial jurisdiction were engaged in the drug traffic and were punished with extremely light penalties which, in some cases, did not amount to as much as thirty Swiss francs. If it were possible to make that penalty a good deal heavier, the Chinese Government's task would be greatly facilitated.

Nevertheless, Dr. Hoo was under no illusions. He was aware of the attitude of principle which would be adopted by the Powers concerned—that was to say, those enjoying extra-territorial rights in China. In that connection, the United Kingdom delegate had referred very ingeniously to the fact that the death penalty was to-day provided in China for narcotics offences; Mr. Dowson considered that that penalty would be too severe for British nationals. That was, of course, a

<sup>1</sup> Document Conf.S.T.D.1, Annex 2.



striking example, but, even if the discrepancy between the penalties imposed in China and those provided for by the Powers in question had been less considerable, those Powers would still refuse to accept the Egyptian amendment because it impaired the principle of extra-territoriality.

The delegate of China would naturally vote in favour of the Egyptian amendment. If the majority of the Conference was opposed to it, he reserved the right to submit an amendment to M. Gorra's text which, he hoped, would meet with the Conference's approval.

M. NISHIMURA (Japan) wished to make a brief statement. The Japanese Government could not agree to the insertion in the future Convention of a provision which affected the existing system of extra-territorial jurisdiction in any way whatever. The Japanese delegation had received categorical instructions from its Government on that point.

M. GORRA (Egypt) wished to reply to the criticisms of his proposal, the gravity of which he fully realised. The main objection, which had been so categorically and energetically expressed in the Japanese delegation's remarks, was that the capitulations system would be affected. M. Gorra hastened to reassure the Conference on that point. Egypt had never had the slightest intention of taking advantage of the present Conference to impair the capitulations system. He thought, further, that the form which the discussion had taken should allay any misgivings in that respect. Moreover, as the Greek delegate had pointed out, the observations and proposals made by the Egyptian Government in its memorandum were in accordance with the capitulations system.

The delegations would also remember that M. Gorra had only submitted his present amendment as a subsidiary proposal when he had found that the penalties contemplated by the contracting parties would not be "very severe". Moreover, when Article 1 was being completed, he had asked the President to postpone the discussion of his amendment, in the hope that the article would provide for sufficiently severe penalties to make that amendment unnecessary.

The Egyptian delegation had had no intention of impairing the capitulations system. Moreover, should the capitulations problem come up for discussion, the Egyptian Government would call upon someone whose words carried more weight than his own when, as he hoped would shortly be the case, the hour of destiny struck for his country.

M. Gorra simply wished to show that this amendment was within the framework of the capitulations and was also quite in conformity with the draft Convention which the delegations were called upon to sign on behalf of their Governments.

Of what did the capitulations system consist? It comprised two immunities: immunity from jurisdiction and immunity from legislation—that was to say, on the one hand, the consular courts tried their own nationals and, on the other, the local law was not applicable to foreigners who were nationals of the Capitulation Powers.

In the present instance, there was no question of encroaching in any way upon the former immunity. The Egyptian delegation had not asked, as would have been the case if it had had a different intention, that, as regards narcotics offences, foreigners who were nationals of the Capitulation Powers should be tried by the Egyptian courts. The consular courts would continue to try their own nationals under the same conditions as in the past. All that the Egyptian delegation asked was that, within the limits of Egyptian territory, those courts should apply Egyptian law. Moreover, whatever law was applied, the judges would be there to apply it and could acquit any accused person if full proof of his culpability was lacking. The judges of the Capitulation Powers would therefore have the last word, and that was the real safeguard provided by the capitulations.

Immunity from legislation was of secondary importance in the present case, because everyone was agreed that drug offences should be severely punished. The question was therefore a subsidiary one. Furthermore, notwithstanding the capitulations system, there were at present several purely and specifically Egyptian laws that were applied to foreigners by the mixed courts. For instance, in the matter of irrigation, certain laws which were not approved either by Parliament or by the Assembly of the Mixed Court of Appeal were applicable to foreigners. People consulted him daily on the matter. If, for instance, an installation set up by a foreigner belonging to a capitulation country had to be removed, the Egyptian authorities removed it simply after giving him notice. The same applied in regard to laws relative to prohibitions, exports, Customs questions, etc. Consequently, several specifically Egyptian laws were applied to nationals of the Capitulation Powers without the consent of their country or the approval of the Mixed Court of Appeal.

It could not therefore be said that immunity from legislation was thereby affected. Why had the delegations come to Geneva? For the precise purpose of framing legislation in regard to narcotic drugs. If the Egyptian delegation had found that the penalties laid down in Article 1 of the Convention were more or less equivalent to those provided for by Egyptian law, there would have been no need for it to submit its amendment and the consular courts would simply have applied the penalties stipulated in the Convention.

In short, the only remaining objection to the Egyptian amendment was that the penalties enacted by Egyptian law were more severe than those provided for by the law of certain countries having extra-territorial jurisdiction, as had been pointed out by the United Kingdom delegate in his reference to Chinese law. If that were the only objection, it could easily be overcome by adding at the end of the amendment that the penalties applicable could not, however, exceed a certain maximum, say five years' imprisonment.

That objection was not sufficiently weighty to cause the amendment to be rejected. Although Egypt laid down severe penalties, she did not go so far as to inflict capital punishment. It was clear that a question of public order was involved, as M. Contoumas had pointed out. He had



recalled the fact that, in Greece, the penalties in cases of illicit traffic were relatively light, and that his Government had recognised the necessity for enacting specially rigorous provisions in the case of offences committed in Egypt by Greek nationals.

That was all the Egyptian delegation wanted. It was not asking that the Powers should punish their nationals in the home country in the same way as in Egypt, but only that in Egyptian territory the penalties should be uniform, whether the offences were committed by foreigners who were or were not nationals of the Capitulation Powers or by Egyptians.

The Egyptian delegate could not emphasise too strongly the fact that immunity from jurisdiction of the nationals of the Capitulation Powers would in no way be affected and that the judges of the consular courts would have the last word. Even in doubtful cases, they could acquit the accused. The efficacy of that safeguard was increased by the fact that Article 12 of the draft Convention left unimpaired the principle that the offences referred to in Article 1 should be prosecuted and punished in conformity with the general rules of the domestic law of each country.

On the other hand, if the Egyptian amendment was rejected for fear that the penalties would be too severe, a peculiar situation would arise: Article 1 would have to be worded quite differently on account of Egypt. It would no longer be stipulated that each of the contracting parties "agrees to make the necessary legislative provisions for severely punishing . . .", but, on the contrary, that each of them "agrees to make the necessary legislative provisions for *not* punishing "too severely".

The United Kingdom delegate had suggested, as a subsidiary proposal, an article similar to that to be found in the Convention on the Trade in Arms. In reply to a remark by M. Contoumas, the Egyptian delegate explained that he had not actually expressed himself in favour of a formula to that effect. He had merely referred to Article 30 of the Convention on the Trade in Arms in connection with the question of the place where his amendment should be inserted. He noted that the Convention on the Trade in Arms contained, in Article 30, a similar provision. Although he thought that the right place for his amendment was in Article 1, he would leave the matter to the Committee of Jurists.

In any case, M. Gorra asked the United Kingdom delegate to explain to him what would be the advantage, from the point of view of Egypt, of a provision to the effect that "the High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake . . . to prohibit all action by their nationals contrary to the provisions of the Convention". Article 1 was much stronger, since it provided for severe penalties, whereas Article 30 merely referred to a prohibition. If the United Kingdom delegate could show that an article similar to that inserted in the Convention on the Trade in Arms had a much wider scope, M. Gorra might agree to a subsidiary amendment on those lines. For the moment, he urged that a vote by roll-call should be taken on his amendment, subject to the formal changes which might be made by the Committee of Jurists.

The PRESIDENT thought that the question had now been cleared up sufficiently to enable a vote to be taken as soon as the Chinese delegate had submitted his proposal.

M. DE VASCONCELLOS (Portugal) pointed out that it was getting late and the subject was by no means exhausted. Moreover, it would not be possible for him to vote, as he had asked his Government for instructions but had not yet received them.

Dr. Hoo Chi-Tsai (China) said that he would vote in favour of the Egyptian amendment, but that, in view of the observations that had been made, even if the Conference adopted that amendment, the Powers chiefly concerned would, when signing the Convention, make a reservation in regard to the article, so that from a practical standpoint the amendment would have no effect. On that account, he submitted the following proposal which, he thought, might be approved by the Conference if the Egyptian amendment were rejected. He suggested that the last phrase of the Egyptian amendment should be omitted and replaced by the following: "to enact the necessary legislative provisions to enable their extra-territorial courts to prosecute and punish them [their nationals] at least as severely as if the offences had been committed in their respective territories". That principle did not in any way conflict with the system of extra-territoriality, but might, nevertheless, be useful in combating the drug traffic, inasmuch as it would compel the contracting parties to apply their domestic law with the same severity in identical cases, whether the offence was committed on their territory or on that of another contracting party where they enjoyed extra-territorial privileges.

The PRESIDENT, considering that the Chinese proposal would be submitted only if the Egyptian amendment were rejected, invited the Conference to take a decision first on the Egyptian amendment.

M. DE VASCONCELLOS (Portugal) stated that he had asked his Government for instructions and therefore could not vote. If a vote were taken, however, he reserved the right to raise the question again at the second reading.

Dr. SCHULTZ (Austria) was in the same position as M. de Vasconcellos. As the problem was one of great importance and had still to be fully examined, could not the vote be postponed—for example, for two days—so as to allow the delegations time to consult their Governments?

The PRESIDENT said that he was responsible for the order in which the Conference's work was taken. He would like to point out that the Egyptian amendment had been submitted and distributed on June 8th—that was to say, a fortnight before. The delegations had therefore had full time to ask for instructions. If, however, some of them had not yet received instructions, they could revert to the question at the second reading; but the discussion would have to be finished that day.

M. DE VASCONCELLOS (Portugal) explained that he had asked for the necessary instructions a fortnight before, but that his Minister had then just left on a journey.

*A vote was taken by roll-call on the Egyptian amendment, there being twenty-eight delegations present.*

*The following five delegations voted against the Egyptian amendment: United Kingdom, France, Greece, Japan, Netherlands.*

*The following four delegations voted in favour of the amendment: United States of America, China, Egypt, Mexico.*

*The following nineteen countries abstained from voting: Afghanistan, Austria, Brazil, Chile, Czechoslovakia, Denmark, Hungary, Iraq, Irish Free State, Liechtenstein, Norway, Poland, Portugal, Roumania, Siam, Spain, Switzerland, Uruguay and Yugoslavia.*

*The delegations of the following countries were absent: Bulgaria, Canada, Cuba, Ecuador, Honduras, India, Nicaragua, Panama, Peru, Turkey, Union of Soviet Socialist Republics, Venezuela.*

*The Egyptian amendment was rejected.*

The PRESIDENT announced that the Conference would take a decision on the following day on the Chinese delegation's amendment.

#### ARTICLE 14.<sup>1</sup>

*The High Contracting Parties agree that any disputes which may arise between them relating to the interpretation or application of the present Convention shall, if they cannot be settled by direct negotiations or, through arbitration, by agreement between the parties, be referred for decision to the Permanent Court of International Justice. In case any or all of the High Contracting Parties who are parties to such a dispute should not be parties to the Protocol of December 16th, 1920, relating to the Permanent Court of International Justice, the dispute shall be referred, at the choice of the parties and in accordance with the constitutional procedure of each party, either to the Permanent Court of International Justice or to a court of arbitration constituted in accordance with the Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, or to some other court of arbitration.*

M. GORGÉ (Switzerland), who said that he would be unable to attend the following meeting, at which the formal clauses would be discussed, desired to submit forthwith a few observations on Article 14.

Article 14 was an arbitration clause of great importance and called for the Conference's full attention. On examining its text, M. Gorgé had found it unsatisfactory. If the unessential part were eliminated, its purport was virtually that the contracting parties would have recourse to the Permanent Court if disputes arose between them which could not be settled by direct negotiations or through arbitration and that, if the disputes could not be settled by recourse to the Permanent Court, they could be submitted to arbitration. That was a vicious circle.

In the second place, the question of arbitration was settled with no mention of conciliation. Switzerland in particular, however, had several treaties of conciliation alone, and she attached the same importance to both procedures. The Federal Government attached particular value to conciliation, because the decisions resulting from that procedure were not of an absolutely final character, but were calculated to allay the irritation felt by a dissatisfied litigant.

The third objection was this: the contracting parties could have recourse, "at the choice of the parties", either to the Permanent Court or to arbitration; but, if no agreement were reached, there would be a deadlock and the procedure would be paralysed.

In the fourth place, the article contained the reservation "in accordance with the constitutional procedure" of each of the contracting parties; it was the first time that M. Gorgé had seen such a provision in an arbitration clause of a Convention concluded under the League's auspices. Finally, he would add that, under the present text, the position remained as if the General Act of September 26th, 1928, for the Pacific Settlement of International Disputes had never been signed at Geneva.

There was, however, a much better text—namely, Article 25 of the 1931 Convention on Limitation. M. Gorgé had read and reread that text and found it impeccable. What were the "agreements in force between the parties" referred to in the first paragraph of Article 25? They might be either a special treaty of conciliation or arbitration, or the Optional Clause of the Statute of the Court, or the General Act of September 26th, 1928. Since an admirable text was already available, and one which all the Governments represented at the present Conference had accepted,

<sup>1</sup> Document Conf.S.T.D.29

why have totally different arbitration clauses for illicit traffic? Moreover, the 1931 text fully met the objection to the present text—namely, that the procedure would be paralysed: the 1931 Convention gave preference to the Permanent Court, but, if a party did not wish to or could not have recourse to that procedure, it had to submit the dispute to an arbitration tribunal set up in accordance with the Hague Convention of October 18th, 1907.

M. Gorgé regretted that he could not attend the next meeting to learn the opinions of the other delegations on this Article 25 of the 1931 Convention. He did not know why that provision had been replaced by a new text. He would propose to the Conference forthwith to retain Article 25 of the Convention of 1931 and to delete the text at present proposed.

### 30. Drug Addiction: Recommendation proposed by the Delegation of Chile.

The PRESIDENT informed the Conference that the Chilean delegation had just handed in to the Bureau the following recommendation regarding drug addiction: <sup>1</sup>

“ The Conference,

“ In view of the social danger represented by the drug addict inasmuch as he serves to encourage illicit drug traffic and provides a medium for that traffic in both its national and international aspects:

“ Recommends Governments to take all necessary measures possible for the internment and medical treatment of drug addicts.

“ It also recommends Governments to forward to the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs a complete documentation on the campaign against drug addiction as a contribution towards the studies at present being made with the object of proposing to the Council such action of an international character as the Committee deems advisable.”

*The Conference decided to refer the above recommendation to the Committee of Jurists for its opinion.*

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## TWENTY-THIRD MEETING.

*Held on Tuesday, June 23rd, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

### 31. Examination, at a First Reading, of the Draft Convention: Revised Text prepared by the Committee of Experts<sup>2</sup> (continuation).

#### ARTICLE I (continuation).

*Sub-amendment proposed by the Chinese Delegation to the Amendment intended by the Egyptian Delegation to supplement Article I.*

The PRESIDENT recalled that, at the last meeting, the Chinese delegation had submitted the following amendment to the Egyptian proposal intended to supplement Article I: <sup>3</sup>

“ To add to Article I a last paragraph, reading as follows :

“ ‘The High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake, in cases where the rules of this Convention cannot be enforced by the local courts as regards their nationals in such territory, to enact the necessary legislative provisions to enable their extra-territorial courts to prosecute and punish them at least as severely as if the offence had been committed on their own respective territories.’ ”

He believed that the same objections which had led to the Egyptian delegation's amendment being defeated at the last meeting by five votes to four with nineteen abstentions would apply with equal force to the Chinese delegation's sub-amendment. The Conference obviously held (as the large number of abstentions showed) that the matter was one with which it was not competent to deal.

Another objection to the sub-amendment was that the fact of adding such a clause to the provisions of the Convention seemed to imply that it was not certain that the extra-territorial courts of contracting parties would impose penalties as adequate as the national courts.

From the drafting point of view, also, he thought there were objections to the wording of the phrase beginning “ to enact the necessary legislative provisions ”, particularly to the inclusion of the word “ punish ”.

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<sup>1</sup> Document Conf.S.T.D.37.

<sup>2</sup> Document Conf.S.T.D.2, Annex 3.

<sup>3</sup> Document Conf.S.T.D.26 (a).

Mr. DOWSON (United Kingdom) said that, in the light of the results of the vote on the Egyptian delegation's amendment, he must, on maturer reflection, modify the attitude taken by the United Kingdom delegation to the general idea embodied in Article 30 of the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War. The present Conference, to judge by the number of abstentions, was obviously not in favour of considering the Egyptian delegation's proposal. It remained to be seen whether the sub-amendment of the Chinese delegation would prove more acceptable after the necessary amendments had been made.

Dr. Hoo Chi-Tsai (China) agreed with the President that the good faith and sincerity of the signatories to a Convention must always be tacitly assumed. At the same time, the fact that international Conventions had to be signed at all implied a certain distrust.

His original intention had been merely to enter a reservation to Article 1 on the subject of extra-territorial jurisdiction; but, as the Egyptian proposal had been found unacceptable, he had tabled a fresh amendment, most of which was a reproduction of Article 30 of the 1925 Trade in Arms Convention.

The wording of the last phrase was practically the same as that of the first paragraph of Articles 3 and 4 of the draft Convention. The words "at least" had been added in order that countries which desired to do so could authorise their consular courts to enact severer penalties than those laid down in national legislation.

Dr. Hoo recalled that the purpose of the Convention was to strengthen the campaign against the illicit traffic. Those delegates who were also members of the Opium Advisory Committee were aware of the special situation of China in that respect, and knew that the adoption of this amendment and its loyal enforcement by the signatory countries would be of immense help to the Chinese Government. The immunity notoriously enjoyed by foreign traffickers in China was generally recognised as constituting a serious menace.

As to the large number of abstentions, these might also have been due to the fact that many delegations did not know how to vote.

M. COUTOMAS (Greece) agreed with the President that the large number of abstentions was proof of the Conference's feeling that the matter did not really come within its purview, the more so as the question had not been raised at either of the two previous consultations and a less sweeping suggestion of similar scope had been rejected by the Committee of Experts.

M. GORRA (Egypt), in reply to M. Coutomas, reminded the Conference that the question of extra-territorial jurisdiction had been specifically raised in the Egyptian Government's communication of July 13th, 1935.<sup>1</sup>

His own amendment having been defeated, he was prepared to vote for that of the Chinese delegation, though he himself would have thought it too self-evident a proposition to require inclusion in an international Convention, especially after the Conference had heard the Greek delegate declare that his Government had enacted severer penalties for drug-traffic offences committed in Egypt than for similar offences committed in Greece.

M. DELGORGE (Netherlands), in explanation of the vote he proposed to cast, said that he considered the Chinese delegation's amendment unnecessary, as an obligation to impose severe punishment was embodied in Article 1. The wording was also unacceptable for the reason that extra-territorial courts were not always empowered to impose punishment: punishment was left in many cases to the national courts. Though in favour of the principle which it embodied, he could not vote for the Chinese delegation's amendment as it stood.

Dr. Hoo Chi-Tsai (China) did not wish to embarrass his colleagues by insisting on a vote by roll-call, as he was entitled to do; but he wished to say that, if his delegation's amendment were not adopted, or if the principle underlying it, which was quite in conformity with the spirit of the Convention, were not loyally observed by the signatories to the future Convention, China would have to decline all responsibility for the serious situation created by the continued operations of numbers of foreigners engaged in the illicit traffic, who were not punished as severely as if the offences had been committed in their own countries. He trusted that his apprehensions on the point would not be justified, but, if they were, the responsibility would lie, not with China, but with the Conference.

M. BOURGOIS (France) was in favour of the principle of the amendment; but, in view of the complicated problems involved with regard to the jurisdiction of consular courts in international and foreign concessions in China, he thought the amendment should be very carefully drafted by the Drafting Committee.

*On a show of hands, the Chinese amendment was adopted by 13 votes to 1, the final text being referred to the Drafting Committee.*

<sup>1</sup> Document Conf.S.T.D 1, Annex 2.

ARTICLE 14<sup>1</sup> (*continuation*).

The PRESIDENT referred to the observations of the Swiss delegate made at the last meeting.<sup>1</sup> It was a fact that Switzerland had signed the Convention on Counterfeiting Currency, which contained an article of similar tenor to the proposed Article 14; but the President thought it might save discussion if the text of Article 25 of the 1931 Limitation Convention were substituted. The change would, of course, be made subject to consideration of the article by the Drafting Committee, and subject also to the addition to the Limitation Convention text of the words "or to some other court of arbitration".

M. DA MATTA (Portugal) drew attention to the wording of the corresponding article (Article 32) of the 1925 Opium Convention: ". . . the parties to such a dispute may, before resorting to any proceedings for judicial settlement or arbitration, submit the dispute for an advisory opinion to such technical body as the Council of the League of Nations may appoint for this purpose". This further alternative method of settling disputes would not only be a valuable addition to the future Convention; it would also have the merit of ensuring greater uniformity as between the different Opium Conventions.

M. CONTOMAS (Greece) supported the proposal to adopt the text of Article 25 of the 1931 Limitation Convention, but was not in favour of the Portuguese delegate's proposal to provide for resort to the advisory opinion of a technical body chosen by the Council of the League. The latter alternative had been inserted in the 1925 Convention because that Convention dealt with technical questions of imports and exports which came directly within the purview of the League; but a provision of that kind would not be in place in a legal Convention.

*The proposal of the President was adopted.*

*Article 14 was adopted at a first reading.*

ARTICLE 15.<sup>2</sup>

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligation in respect of all or any of his colonies, protectorates and overseas territories or territories under suzerainty or mandate, and the present Convention shall not apply to any territories named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he declares that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time after the expiration of the period of . . . years mentioned in Article 21, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates and overseas territories or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. The Secretary-General shall communicate to all the Members of the League and to the non-member States mentioned in Article 16, all declarations and notices received in virtue of this article.

The PRESIDENT recalled that the United Kingdom delegation had submitted the following additional text<sup>3</sup> in connection with Article 1, paragraph 1, which had been adjourned until the discussion on the formal articles: <sup>4</sup>

"To insert in Article 1, paragraph 1, after the words 'in the present Convention', the following text:

"(a) The High Contracting Parties shall be understood to assume obligations only in respect of their territories to which the Convention applies',

and to place the remaining words of paragraph 1 in a separate sub-paragraph (b)."

*This amendment had subsequently been withdrawn.*

Mr. HARDY (India) had been instructed by the Government of India to make a reservation excluding from the application of the Convention the Indian States and the Shan States forming part of British India. At the same time, he desired to point out that, so far as the Convention

<sup>1</sup> See pages 144-145.

<sup>2</sup> Document Conf.S.T.D.29.

<sup>3</sup> Document Conf.S.T.D.21.

<sup>4</sup> See page 40.

dealt with international traffic, Indian States generally were not likely to be much concerned and that, so far as those States were concerned, the Government of India was ready to invoke their co-operation and, in the light of past experience, had no reason to fear that such co-operation would be withheld.

*The Conference noted the reservation by the Government of India.*

*The Conference decided to add, in paragraph 3, after the words " the period of ", the word " five ".*

*Article 15 was adopted at a first reading.*

#### ARTICLES 16 TO 22.<sup>1</sup>

##### *Article 16.*

*The present Convention, of which the French and English texts shall both be equally authoritative, shall bear this day's date, and shall, until December 31st, 1936, be open for signature on behalf of any Member of the League of Nations, or of any non-member State which received an invitation to the Conference which drew up the present Convention, or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.*

##### *Article 17.*

*The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League and to the non-member States referred to in the preceding article.*

##### *Article 18*

*1. As from January 1st, 1937, the present Convention shall be open to accession on behalf of any Member of the League of Nations or any non-member State mentioned in Article 16.*

*2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in that article.*

##### *Article 19*

*The present Convention shall come into force ninety days after the Secretary-General of the League of Nations has received the ratifications or accessions of . . . Members of the League of Nations or non-member States.*

##### *Article 20.*

*Ratifications or accessions received after the date of the coming into force of the present Convention shall take effect as from the expiration of the period of ninety days from the date of their receipt by the Secretary-General of the League of Nations.*

##### *Article 21.*

*1. After the expiration of (five) years from the date of the coming into force of the present Convention, it may be denounced by an instrument in writing deposited with the Secretary-General of the League of Nations. The denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations and shall operate only as regards the Member of the League or non-member State on whose behalf it has been deposited.*

*2. The Secretary-General shall notify all the Members of the League and the non-member States mentioned in Article 16 of any denunciations received.*

*3. If, as a result of simultaneous or successive denunciations, the number of Members of the League and non-member States bound by the present Convention is reduced to less than . . . , the Convention shall cease to be in force as from the date on which the last of such denunciations shall take effect in accordance with the provisions of this article.*

##### *Article 22.*

*A request for the revision of the present Convention may at any time be made by any Member of the League of Nations or non-member State bound by this Convention by means of a notice addressed to the Secretary-General of the League of Nations. Such notice shall be communicated by the Secretary-General to the other Members of the League of Nations or non-member States bound by this Convention, and, if endorsed by not less than one-third of them, the High Contracting Parties agree to meet for the purpose of revising the Convention.*

*Articles 16 to 22 were adopted at a first reading.*

*The Conference decided to complete Article 19 and Article 21, paragraph 3, by the insertion of the word " ten ".*

<sup>1</sup> Document Conf S.T.D.29.

ARTICLE 23.<sup>1</sup>

*The present Convention shall be registered by the Secretary-General of the League of Nations on the day of its entry into force.*

*In faith whereof the above-mentioned Plenipotentiaries have signed the present Convention.*

*Done at Geneva*

*in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 16.*

Mr. CREMINS (Irish Free State) pointed out, with reference to the first paragraph of the draft article, that, under Article 18 of the Covenant, "No . . . treaty or international engagement shall be binding until so registered"—that was to say, registered with the Secretariat of the League. It would therefore be more logical and more in harmony with the corresponding articles in previous Conventions, such as the 1931 Convention to improve the Means of preventing War, and the 1933 Convention for facilitating the International Circulation of Films of an Educational Character, if the first paragraph were amended to read somewhat as follows :

"The present Convention shall be registered by the Secretary-General of the League of Nations ninety days after the receipt by the Secretary-General of . . . ratifications and accessions. It will enter into force on that date."

The exact form of words could be left to the Drafting Committee to decide.

The PRESIDENT admitted that the contention of the Irish Free State delegate was correct, though the draft text was a reproduction of that adopted in the Convention on Counterfeiting Currency.

*The proposal of the delegate of the Irish Free State was adopted.*

FINAL ARTICLE 1.<sup>2</sup>

*This Convention shall be cited as the Illicit Traffic in Drugs Convention, 1936.*

*The Final Article was adopted at a first reading.*

PREAMBLE.<sup>2</sup>

*The High Contracting Parties having resolved, on the one hand, to strengthen the measures intended to prevent infringement of the provisions of the International Opium Convention signed at The Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs signed at Geneva on July 13th, 1931, and, on the other hand, to prevent and punish by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above Conventions, the undersigned plenipotentiaries, holding full powers in good and due form, have agreed on the following provisions.*

The PRESIDENT observed that the Committee of Experts had left it to the Conference itself to decide whether a preamble was necessary. For his part, he thought it desirable to have one, since a preamble was usual in an international Convention. The text of the preamble in the revised draft Convention might be taken as a basis.

M. DA MATTA (Portugal) said that, when he had first addressed the Conference, he had urged the necessity for a preamble.<sup>3</sup> In order to determine its scope, it had been necessary to postpone its consideration until the end of the discussion. In most international Conventions, the legal provisions were preceded by a preamble, short and simple or lengthy and complicated, as the case might be. The preamble of the 1925 Geneva Convention was, in his opinion, unduly long. He agreed with the text proposed by the Committee of Experts and would leave it to the Drafting Committee to consider whether it was in all respects appropriate to the text of the Convention as adopted by the Conference.

M. GORGÉ (Switzerland) ventured to recall that there were certain States which, while quite prepared to sign and ratify the present Convention, had not yet acceded to one or other of the previous Conventions. It might be difficult for those States to accept a preamble which specifically referred to the previous Conventions; he suggested therefore that the text of the preamble should be so amended as to omit any such reference.

<sup>1</sup> Document Conf. S.T.D.29.

<sup>2</sup> Document Conf. S.T.D.2, Annex 3.

<sup>3</sup> See page 14.



The PRESIDENT was in favour of the omission of the reference in question, unless the Drafting Committee could incorporate it in a form of words to which M. Gorgé's objection would not apply.

*The preamble was adopted at a first reading, subject to the above reservation.*

ARTICLE 1 (continuation).

*Paragraph 2, Sub-paragraph (a) : Definition of the Word "Extraction".*

Major COLES (United Kingdom) said that the Sub-Committee set up<sup>1</sup> to define the word "extraction" in Article 1, paragraph 2, sub-paragraph (a), met on June 19th. It had before it a definition prepared by the Secretariat in the following terms :

"The term 'extraction' connotes an operation whereby a drug is separated from the substance of which it forms part, without involving any actual manufacture, conversion or preparation within the meaning of the Conventions of 1912, 1925 and 1931."

The Sub-Committee felt it was desirable to retain the word "extraction" in Article 1, and, after careful consideration, adopted the following definition for insertion in the article in question:<sup>2</sup>

"For the purposes of this Convention, the word 'extraction' connotes an operation whereby a narcotic drug is separated from the substance or compound of which it forms part, without involving any actual manufacture or conversion properly so-called."

It had been necessary to hold a further meeting in order to discuss a difficulty put forward by the Yugoslav delegate. A solution was found in the addition of a second paragraph in the following terms :

"This definition of the word 'extraction' is not intended to include the processes whereby raw opium is obtained from the opium poppy, this being covered by the term 'production'."

The PRESIDENT thanked the Sub-Committee for the work it had done on this question.

*The text proposed by the Sub-Committee for insertion in Article 1 was adopted.*

The PRESIDENT declared the first reading of the revised draft Convention terminated.

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TWENTY-FOURTH MEETING.

*Held on Wednesday, June 24th, 1936, at 10.30 a.m.*

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*President : M. LIMBURG.*

**32. Examination, at a Second Reading, of the Draft Convention: Revised Text prepared by the Drafting Committee.<sup>3</sup>**

The PRESIDENT informed the Conference that the Drafting Committee had appointed two Rapporteurs: one for Articles 1 to 5 of the draft Convention prepared by the Committee of Experts and one for the remaining articles of the draft.

GENERAL STATEMENT BY M. GORGÉ (SWITZERLAND), RAPPOREUR FOR ARTICLES 1 TO 5 OF THE DRAFT CONVENTION PREPARED BY THE COMMITTEE OF EXPERTS (ARTICLES 1, 2, AND 4 TO 9 OF THE FINAL TEXT).

Mr. GORGÉ (Switzerland), Rapporteur, made three general observations :

The Drafting Committee had retained the Portuguese delegation's proposal to divide Article 1 of the draft Convention into several separate articles. Since the article contained fundamental principles, the Drafting Committee had thought it better that each principle should be set forth in a separate article, according to the practice followed in international Conventions and in penal law.

In accordance with the Portuguese delegation's proposal, the Drafting Committee had substituted the word "*fait*" for the word "*acte*" (in the French text), since the former was more in accordance with the terminology of penal law.

The Drafting Committee had not considered that it should merely transcribe the decisions of the Conference. At international conferences, the work of drafting implied one of conciliation, and the Committee had therefore endeavoured to reconcile divergent views expressed during the discussions in the plenary meetings, while keeping to the decisions of the Conference. That attempt at reconciliation had not always been easy, and all had been asked to accept compromises, but the Committee hoped that the Conference would appreciate its action and follow its example.

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<sup>1</sup> See page 84.

<sup>2</sup> See Document Conf. S.T.D.36.

<sup>3</sup> Document Conf. S.T.D.39. For the final text of the Convention as adopted by the Conference, see Annex 6.

*Article 1* : The words " now or hereafter may be " had been inserted in this article in order to satisfy the Canadian delegation, which had asked for an express stipulation that the Convention should apply, not only to narcotic drugs at present referred to in existing Conventions, but also to other narcotic drugs which might subsequently come under such Conventions. That addition had been unanimously accepted.

*Article 2* : This article was the corner-stone of the Convention and had been very fully considered by the Committee.

*Paragraph 1* : This paragraph represented a compromise which had been proposed in order to reconcile the divergent views expressed at the Conference regarding the maintenance of the words " if wilfully committed " in Article 1, paragraph 2, of the draft Convention prepared by the experts. Those words had been omitted in order to satisfy the Canadian and American delegations, which had stated that their Governments would be unable to accept the Convention if those words appeared in any article. But, in order, at the same time, to maintain the principle, adopted by the majority of the members of the Conference, that an act must not be severely punished unless it had been wilfully committed, the Committee proposed the insertion in the Final Act, for example, of an interpretative clause similar to that appearing in paragraph 1 of the chapter on interpretations (document Conf.S.T.D.39, page 10). This solution represented a concession on the part of the advocates of the two opposing views, but it would be wise to accept it in order to enable the Convention to be adopted by all States.

*Sub-paragraph (a)* : Although the Conference had decided to insert the words "*la délivrance*" in the French text, the Drafting Committee had preferred to retain the expression "*cession*", which had been originally proposed.

*Sub-paragraph (b)* : The Committee had accepted without change the text proposed by the Portuguese delegation.

*Sub-paragraph (c)* : The act covered by the English word "conspiracy", which the Canadian and American delegations had requested should be mentioned in this paragraph, had been rendered by the expression "*l'association ou l'entente*", which, in the opinion of all, was the French equivalent of "conspiracy".

*Sub-paragraph (d)* : No change.

*Articles 3 and 4* : No observations.

*Article 5* : The Drafting Committee had endeavoured to find a less imperative formula than that of the corresponding provision of the draft Convention prepared by the experts (Article 1, paragraph 2(b)). Article 5 no longer contained the formal obligation embodied in the draft Convention. The undertaking to enact the necessary legislative provisions for severely punishing breaches of the law on the subject had been omitted. In addition, Article 5 did not specifically state the punishable acts, but merely provided that the contracting parties "shall likewise severely punish contraventions thereof": in other words, the States would punish at their discretion in accordance with the principle of good faith. The Committee had shortened and simplified the text in order to enable all States to accede to this article.

The Drafting Committee hoped that the Conference would accept this article, the principle of which was in conformity with the spirit of the Convention. If all States undertook to punish all acts mentioned in Article 2, those which had spontaneously enacted legislation covering cultivation, etc., must assume the same undertaking with regard to infringements of such legislation. The objection had been raised that the latter States would be the only ones to assume that obligation; but it should be pointed out that the States cultivating plants which might be used for the manufacture of narcotic drugs occupied a privileged position, as they controlled the stocks of raw materials. Since a special situation involved special duties, it was to be hoped that the States in question would accept the Drafting Committee's proposal and so prevent a gap in the text of the Convention.

*Article 6* : For the sake of uniformity of terminology, the words "*dans les conditions établies par leurs législations respectives*", which appeared in the French text of Article 2 of the draft Convention, had been replaced by the words "*dans les conditions prévues par la loi nationale*", which had been adopted for other articles of the Convention.

*Article 7* : The Committee had adopted for this article the text upon which the Conference had decided. An omission having been pointed out by the Portuguese delegation, however, the Committee had examined the question. On account of the difficulty of making good this omission in the text of the article, the Committee had decided in favour of embodying the principle proposed by the Portuguese delegation in the recommendations of the Final Act. Article 7 was thus completed by the text of the second recommendation proposed by the Drafting Committee.

In regard to that recommendation, the Rapporteur pointed out that, whereas the Drafting Committee had adopted as it stood the text proposed by the Portuguese delegation, there had been inserted in the text submitted to the Conference the words "as far as is practicable". That addition considerably weakened the recommendation and robbed it of almost all practical value, since States already granted, in so far as circumstances permitted, the extradition of their nationals who were guilty of offences committed abroad.

*Article 8* : No observations.

*Article 9* : The Drafting Committee had adopted the text proposed by the Portuguese delegation to replace the provisions of Article 5 of the revised draft Convention.

In paragraph 2, however, the word "henceforward" was omitted in the sentence: "the High Contracting Parties . . . henceforward recognise the offences referred to above as extradition crimes". The word "henceforward" was incorrect, as it obliged the contracting parties to recognise such acts as cases for extradition as soon as they ratified the Convention. Article 2, however, provided that it was only when States had ratified the Convention that they would issue the necessary legislative provisions for its application, so that the Convention would not have its full effect until some time after ratification.

Paragraph 4: The Drafting Committee had thought it necessary to delete the words "or its proper tribunal" after the words "the said High Contracting Party", which appeared in the corresponding clause of the revised draft Convention. There appeared to be an antithesis between the two terms, whereas, in international law, the proper tribunal was the contracting party, any body acting for the contracting party being assimilated to such party. In order to meet certain objections, however, the Committee had inserted the words "if his competent authorities" before the words "consider that the offence".

The Drafting Committee realised that the text of the articles it was submitting to the Conference was not perfect. Nevertheless, it represented the best possible compromise. Perfection could not be attained in a Convention which was a work of man and regulated human needs. It would be regrettable if articles were rejected because they were not perfect from the standpoint of law, or because the results they would produce were defective. The Committee thought that the minimum that could be obtained by means of the Convention in itself represented a great gain. It therefore urged the members of the Conference to make a fresh effort at conciliation and adopt the text proposed to them, if possible, as it stood.

The PRESIDENT, after thanking M. Gorgé on behalf of all the delegations, opened the discussion on the Convention at the second reading.

#### ARTICLE 1 (FORMER ARTICLE 1, PARAGRAPH 1).<sup>1</sup>

*In the present Convention, "narcotic drugs" shall be deemed to mean all drugs and substances to which the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931, are now or hereafter may be applicable.*

Dr. Hoo Chi-Tsai (China) observed that, if the words "are now or hereafter may be applicable" were taken literally, they would seem to mean that the Convention applied henceforward to all drugs or substances which, in the future, would fall within the scope of the Convention, and that would be contrary to its spirit and its letter. He would rather say: "to which the provisions of the Convention are applicable . . . and any other drugs or substances that may fall within the scope of the Convention". He would not press the point, however, if the Conference was of opinion that the present text was not ambiguous.

The PRESIDENT felt sure that no one would find any ambiguity in the expression employed. For the Convention to apply, in the future, to other drugs or substances, a legislative provision would first have to be passed bringing such other drugs or substances within the scope of the Convention.

*Article 1 was adopted at a second reading.*

#### ARTICLE 2 (FORMER ARTICLE 1, PARAGRAPH 2)<sup>2</sup> AND INTERPRETATION NO. 1.<sup>3</sup>

##### *Introductory Paragraph and Sub-paragraph (a).*

*Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, the following acts—namely:*

*(a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs:*

Colonel SHARMAN (Canada) desired first, on behalf of his delegation, to thank the Drafting Committee for the great effort at conciliation that it had made.

As regarded sub-paragraph (a), he wished to raise an important question, though one which, in his opinion, was not of a controversial nature. In Article 1 of the Limitation Convention of 1931, drugs were divided into two groups. Under Article 13 of the same Convention, all the provisions of the Geneva Convention were applicable to all the drugs in Group I, whereas the drugs in Group II were covered only by the provisions relating to manufacture, import, export and wholesale trade. Group II included, among others, codeine, which at that moment was of special importance to Canada. The question was whether, in becoming a party to the Convention, a

<sup>1</sup> A second paragraph containing a definition of the word "extraction" was subsequently added. See page 156.

<sup>2</sup> Sub-paragraph (b) of paragraph 2 became Article 5 of the final text of the Convention.

<sup>3</sup> For the text of the interpretation, see Final Act, Annex 8.

State assumed the obligation to prosecute for offences committed in respect of drugs included in Group II only in so far as was provided by the 1931 Convention, or whether the other provisions would also apply to that group—for example, those referring to detention in custody.

Mr. DOWSON (United Kingdom) said that, in his personal opinion, the answer to the question raised by the Canadian delegate was that the obligations assumed by the signatory Powers under Article 2 of the present Convention were confined to the enactment of severe penalties for acts committed contrary to the previous Conventions, and that, accordingly, no transaction in respect of codeine, for example, which was not contrary to the provisions of the previous Conventions, fell within the scope of the present Convention.

M. DELGORGE (Netherlands), referring to the omission of the words "if wilfully committed", observed that the Netherlands delegation, in view of the importance of the question, had consulted its Government as to the possibility of deleting that provision from the body of the Convention and inserting it in the form of an interpretation in the Final Act. The Netherlands Government was of opinion that such a procedure would make it much more difficult to accede to the Convention. The reasons for the Netherlands Government's attitude in the matter had been stated by M. van Angeren and, accordingly, M. Delgorge had no need to repeat them. Nevertheless, in evidence of its conciliatory spirit, the Netherlands Government was prepared to agree to the transfer of that condition to the Final Act, on the understanding that it made no real difference. Accordingly, the question would have to be stated in the Final Act in a more positive wording than that drawn up by the Drafting Committee.

M. SILIANOFF (Bulgaria) desired to submit a reservation which the Bulgarian Government had been unable to submit to the Conference at the first reading. The reservation was worded as follows:

"At the moment of signing the present Convention, the Government of Bulgaria reserves its right to apply the penalties referred to in Article 2 solely to such of the offences specified in (a) to (d) of the said article as, by reason of their seriousness, would be liable to imprisonment or other penalties of deprivation of liberty consistently with the fundamental rules of penal law in the Kingdom. It will impose fines or other lighter penalties for offences of minor importance."

Dr. SCHULTZ (Austria) wished to make a statement similar to that of the Netherlands delegate. The Austrian Government was one of those that considered it specially important that only intentionally committed offences should fall within the scope of the Convention. He had just received from his Government fresh instructions to urge that that point should be most clearly formulated in the Convention. Dr. Schultz too, however, was desirous of conciliation and was ready to make certain sacrifices. He would agree that the words in question should not appear in the actual Convention, provided—and he thought that suggestion was also consistent with M. Delgorge's idea—that the interpretation in question appeared, not in the Final Act, but in a special protocol. That was the procedure adopted by the Conference on Counterfeiting Currency, which had drawn up a special protocol on the subject of interpretations. Dr. Schultz agreed with his Netherlands colleague that it was indispensable to have a more positive and clearer wording than the present one.

As regarded the word "*cession*" in the French text of sub-paragraph (a), Dr. Schultz pointed out that at first the word "*délivrance*" had been discussed, and it had been observed that the word "*cession*" had a special acceptance in law. He wondered whether it would not be better to give an interpretation of the meaning to the word "*cession*" in the present Convention.

The PRESIDENT thought the Conference might revert to the drafting of words such as "*négligence*", etc., when considering the Final Act. He would prefer to keep the word "*cession*". The discussions would be recorded in the Minutes. Moreover, the text under discussion read "*cession à quelque titre que ce soit*", so that "*cession*" was plainly used in a wide sense and there could be no difficulty.

M. GORGÉ (Switzerland), Rapporteur, thought it would be advisable to examine at once, not only Article 2, but also the interpretation in the Final Act, seeing that, in the view of the delegates of the Netherlands and Austria, the two questions formed a single whole and that, if the condition referred to in Article 2 were omitted, it should be ascertained what was to be said in the Final Act.

The Austrian delegate's proposal was not without interest; in view of the importance of the question, a special protocol would be more appropriate than an interpretation in the Final Act. He quite understood the Austrian Government's reasons, but was not sure that its solution would not add to the difficulties already encountered. It would be objected that, if it were felt necessary to stress this question to the extent of dealing with it in a special protocol, there was no reason why it should not be settled in the Convention itself. Furthermore, it was to be hoped that the Final Act would be signed by all the delegations present, but they might not all sign a special protocol. If, in particular, those delegations most interested, who questioned the advisability of inserting this provision in the Convention itself, did not sign the special protocol, what would be the position? The Conference had before it a compromise which could not give entire satisfaction to either party. It should also be made easy for the delegations who objected to putting these words in the body of the Convention to accept the proposal. If, subsequently, they did not sign

the special protocol, the States would find that they had ratified a Convention from which the words in question had been omitted and had gained nothing in return. The best solution would seem to be that proposed by the Drafting Committee.

As regards the objection raised by the delegates of the Netherlands and Austria concerning the wording of the interpretation in the Final Act, there was little need for him to support it, as the text was quite clear. Nothing was to be gained by lengthening it, and he appealed to the Netherlands and Austrian delegations to show a spirit of conciliation and to allow the Conference to keep to the simple, clear formula drawn up by the jurists, which read as follows :

“ It is understood that the provisions of the Convention, and, in particular, the provisions of Articles 2 and 5, do not apply to any offence committed by inadvertence.”

The PRESIDENT said that M. Gorgé had anticipated him in suggesting that Article 2 and the interpretation in the Final Act should be examined together. Personally, he hoped Dr. Schultz would not insist on a special protocol. The grounds put forward by M. Gorgé in support of putting the interpretation into the Final Act were to the point.

Dr. SCHULTZ (Austria) was inclined to yield to the President's view as to the scope and effect of an interpretation in the Final Act. He pointed out, however, that this would be a great sacrifice for his and other delegations. He did not think the solution proposed by the Committee of Jurists was adequate. If the delegations concerned consented to make certain sacrifices, they expected the delegations for whose benefit they were made in all fairness to sign the special protocol as well. He would not press the matter unduly if the Conference's work would be impeded, but he repeated that the problem was sufficiently important to be treated in the manner he had suggested.

M. DELGORGE (Netherlands) had received a communication from his Government to the effect that it could not agree to the omission of the condition in question from the Convention and its insertion in the Final Act except in a positive form, thus :

“ It is understood that the provisions of the Convention, and in particular the provisions of Articles 2 and 5, *apply solely to any acts committed wilfully.*”

The Netherlands delegation would, however, agree to the word “ intentionally ” instead of “ wilfully ” in the English text.

Dr. SCHULTZ (Austria) supported M. Delgorge's proposal.

The PRESIDENT saw very little difference between the Drafting Committee's wording and that preferred by the Netherlands and Austrian delegations. Perhaps the text would be a little clearer if the words “ *à tout acte* ” were replaced by the words “ *aux faits* ” in the French text.

M. DA MATTA (Portugal) thought the President's amendment was an improvement on the present text. As to the objection raised by the Netherlands and Austrian delegations, the two formulæ had exactly the same meaning and there was not the slightest shade of difference between them. As the Convention did not apply to offences committed unintentionally, it followed that it only applied to offences committed intentionally.

As regards Dr. Schultz's proposal to put the interpretation in a special protocol instead of in the Final Act, it should be noted that these two procedures were employed in international Conventions, but it was more usual to put interpretations and reservations into a special protocol, as in the Convention on Counterfeiting Currency.

Mr. DOWSON (United Kingdom) suggested : “ do not apply to any offence committed unintentionally or by inadvertence ”. He did not think that would entail any change in the French text.

M. DELGORGE (Netherlands) repeated that his formal instructions from his Government made it impossible for him to accept any but positive formulæ. Should the Conference not be of the same opinion, he would ask his Government for further instructions. For the moment, he could say nothing.

M. DE REFFY (France) noted that, according to the Portuguese delegate, there was no difference between the present negative formula and the positive formula suggested. In those circumstances, why should not the Conference accept the positive formula in a spirit of conciliation?

In reply to Mr. Dowson's suggestion, he pointed out that the words “ unintentional ” and “ by inadvertence ” expressed different ideas.

Colonel SHARMAN (Canada) said that he was quite satisfied with the words “ unintentional ”. He regretted the objection raised by the Netherlands delegate, as his Government much preferred the present text.

The PRESIDENT considered that, whatever solution were adopted, it would raise difficulties on one side or the other. In those circumstances, he was of opinion that the text should be left as it was, with the amendment he had suggested, which would make it still clearer that acts committed by negligence could never be punishable.

M. GORGÉ (Switzerland), Rapporteur, observed that it was not really an amendment but rather a rectification, since, as the result of a proposal made by the delegate of Portugal, it had been decided to replace the word "*actes*" by "*faits*". The same substitution would have to be made throughout the Convention.

M. DELGORGE (Netherlands) stated that, after what the President had just said, he was prepared to get into touch with The Hague again to ask for fresh instructions; but he felt that his Government would not agree to sign the Convention unless the present negative formula were replaced by a positive formula. The Canadian delegate's observations had shown that there was a real difference between the two. If the Conference maintained the existing text, M. Delgorge thought that his Government would find it very difficult to sign the Convention.

The PRESIDENT said that, in his personal opinion, there was no difference between the two formulæ.

M. DELGORGE (Netherlands) said he would also communicate that view to his Government.

Dr. Hoo Chi-Tsai (China) noted that it was agreed that both formulæ had the same meaning and that some delegations would only accept one and others only the other; accordingly he suggested, as a compromise, and despite the oddity of such a solution, that both formulæ should be used, the words "namely, that they should apply only to acts committed wilfully" being added to the present text! (*Laughter.*)

The PRESIDENT said that the reception given to that suggestion by the whole Conference afforded the best proof that the two formulæ meant exactly the same thing.

At the request of M. Delgorge (Netherlands), the PRESIDENT put to the vote the question whether, in the Conference's opinion, there was any difference between the two formulæ.

*Fourteen delegations were of opinion that there was no difference and 5 delegations were of the contrary opinion.*

*The President's amendment to replace "à tout acte" by "aux faits" was approved.*

The PRESIDENT put to the vote the text, as just amended, of the interpretation to be embodied in the Final Act.

*The text was adopted by 21 votes to 1.*

*The Introductory Paragraph and Sub-paragraph (a) were adopted at a second reading.*

*Sub-paragraph (b).*

*(b) Intentional participation in the offences specified in this article;*

*Sub-paragraph (b) was adopted at a second reading.*

*Sub-paragraph (c).*

*(c) Conspiracy to commit any of the above-mentioned offences;*

M. DELGORGE (Netherlands) said that his Government could not approve sub-paragraph (c). In accordance with the statements previously made on the subject by M. van Angeren, the Netherlands Government would have to make a reservation.

The PRESIDENT asked whether the reservation referred only to the word "conspiracy".

M. DELGORGE (Netherlands) replied in the negative. His Government could not accept the text of the sub-paragraph even in its previous form.

M. GORGÉ (Switzerland), Rapporteur, observed that the Conference would have to consider how far it would accept reservations.

The PRESIDENT said that that question would be settled later.

*Sub-paragraph (c) was adopted at a second reading.*

*Sub-paragraph (d).*

*(d) Attempts and, subject to the conditions prescribed by national law, preparatory acts.*

*Sub-paragraph (d) was adopted at a second reading.*

*Paragraph 2 (New Paragraph).*

*For the purposes of the present Convention, the word "extraction" connotes an operation whereby a narcotic drug is separated from the substance or compound of which it forms part, without involving any actual manufacture or conversion properly so called. This definition of the word "extraction" is not intended to include the processes whereby raw opium is obtained from the opium poppy, these being covered by the term "production".*

M. GORGÉ (Switzerland), Rapporteur, noting that the last paragraph was in the nature of an explanation and not a contractual clause, considered that it should preferably be placed in the Final Act. For reasons already stated, it would be more rational to insert it in the chapter of the Final Act dealing with interpretations. The Drafting Committee had made a great effort to lighten Article 2 as far as possible by reducing it to the simplest form.

M. DA MATTA (Portugal) explained that the question had been discussed on the previous day by the Drafting Committee. Both solutions had been examined. Some members of the Committee had pointed out that, as Article 1 already contained a definition of the term "narcotic drugs", it was more logical to insert the definition of the word "extraction" in the same article. That was the procedure followed in the Limitation Convention of 1931, in which all the terms employed were defined in Article 1. The delegate of Portugal was not absolutely opposed to the insertion of the definition of "extraction" in the Final Act, but he thought it preferable to follow the precedent of 1931.

Mr. DOWSON (United Kingdom) said he had been struck by M. Gorgé's arguments in favour of inserting the text under discussion in the Final Act, more especially since it was not a question of an actual definition; in the second part, particularly, the wording rather expressed an intention than defined a term. In those circumstances, Mr. Dowson, while considering that the arguments were of about equal value on both sides, was prepared to reverse the opinion he had expressed in the Drafting Committee on the previous day and to favour M. Gorgé's view.

Dr. HOO CHI-TSAI (China) supported M. Gorgé's proposal. He pointed out to the Portuguese delegate that the paragraph under discussion also contained a reference to production—a question that was treated, not in Article 2, but in Article 5.

M. DE VASCONCELLOS (Portugal) noted that the United Kingdom delegate found either solution equally acceptable and accordingly suggested as a compromise that the text under discussion should be added to Article 1.

M. CONTOUMAS (Greece) proposed another compromise—namely, that no mention should be made of "extraction" either in the Convention or in the Final Act. He had heard that the definition had been drawn up by the experts at once and without difficulty. Accordingly, the term would similarly be defined without difficulty by the experts of all countries. It would be sufficient, if necessary, to embody the definition in the records or in the report on the Conference which would be made to the Council.

Colonel SHARMAN (Canada) said that he had no very definite view on the subject, more especially since the jurists themselves seemed to be somewhat at variance. However, in view of the desire for conciliation which M. Gorgé had shown throughout, he would support the Swiss delegate's proposal.

M. DE VASCONCELLOS (Portugal) could not accept M. Contoumas' proposal. If the word "extraction" were removed from the Convention altogether, certain parties, who would know that the question had been discussed at the Conference, would not fail to take advantage of it to engage in illicit traffic transactions under cover of the pretext of "extraction".

M. CONTOUMAS (Greece) observed that the word itself should remain in the Convention.

M. DE VASCONCELLOS (Portugal) maintained that a definition was none the less necessary and that, in his opinion, its true place was in Article 1, in conformity with the precedent of the 1931 Convention.

The PRESIDENT considered that there had been too much discussion of a question which was of little importance. His own view was that the definition should remain in Article 2. He put to the vote the question whether the definition of "extraction" should or should not be maintained in the body of the Convention.



*The Conference decided to maintain the definition in the body of the Convention, 12 delegations being in favour and 9 against.*

*Paragraph 2 was adopted at a second reading.*

The PRESIDENT said that the point whether the definition should appear in Article 2 or in Article 1 would be decided at the next meeting.

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## TWENTY-FIFTH MEETING.

*Held on Wednesday, June 24th, 1936, at 3.30 p.m.*

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*President: M. LIMBURG.*

### 33. Examination, at a Second Reading, of the Draft Convention: Revised Text prepared by the Drafting Committee<sup>1</sup> (continuation).

#### ARTICLE 2 (FORMER ARTICLE 1, PARAGRAPH 2) (continuation).

##### *Paragraph 2 (New Paragraph) (continuation).*

M. DE VASCONCELLOS (Portugal) asked whether the definition of "extraction" adopted at the last meeting was to be inserted in Article 1 or Article 2. In the Limitation Convention of 1931, all definitions had been placed in the first article, and he saw no reason for adopting a different practice in the case of the present Convention.

The PRESIDENT was personally in favour of inserting the definition of "extraction" at the end of Article 2, but asked the Conference to vote on the proposal of the Portuguese delegate to place the definition in question in Article 1.

*On a show of hands, the Portuguese proposal was adopted by 10 votes to 5.*

#### *Interpretative Clause No. 1 (continuation).*

Mr. DOWSON (United Kingdom), referring to the interpretative clause discussed at the last meeting,<sup>2</sup> had now ascertained that the best English rendering of the expression in the French text "*tout acte commis non intentionnellement*" would be "offences committed unintentionally". The delegate of Canada having endorsed that rendering, the English text of the recommendation should be amended accordingly.

*Mr. Dowson's proposal was adopted.*

*Article 2 was adopted at a second reading, together with the Interpretative Clause No. 1.<sup>3</sup>*

#### ARTICLE 3 (NEW ARTICLE).<sup>4</sup>

*Article 3 was adopted at a second reading.*

#### ARTICLE 4 (FORMER ARTICLE 1, PARAGRAPH 3).

*Each of the acts specified in Article 2 shall, if committed in different countries, be considered as a distinct offence.*

*Article 4 was adopted at a second reading.*

#### ARTICLE 5 (FORMER ARTICLE 1, PARAGRAPH 2, SUB-PARAGRAPH (b)).

*The High Contracting Parties, whose national law regulates cultivation, gathering and production with a view to obtaining narcotic drugs, shall likewise severely punish contraventions thereof.*

M. DE VASCONCELLOS (Portugal) still disapproved in principle of the provision in this article, but admitted that it had now been given a more acceptable wording. He was therefore prepared to accept the article, though he considered it risky, in principle, to provide, in an international document, for the punishment of offences which were punished by the national legislation of certain countries only.

M. TREBICKI (Poland) also appreciated the efforts of the Drafting Committee to word Article 5 so as to make it more generally acceptable. His first objection to the article was that it implied a differentiation between States which regulated and punished cultivation, gathering and

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<sup>1</sup> Document Conf.S.T.D.39. For the final text of the Convention as adopted by the Conference, see Annex 6.

<sup>2</sup> See pages 152-155.

<sup>3</sup> For the final text of this clause, see Final Act, Annex 8.

<sup>4</sup> See page 162.

production, and States which did not regulate or punish those acts. He would have preferred a recommendation urging all the countries concerned to enact, as soon as possible, provisions for the regulation of cultivation, gathering and production.

His second objection was to the vagueness of the expression "severely punish". The Conference would recollect that, when the Polish delegation had urged the deletion, in Article 1, paragraph 2, of the words "particularly by imprisonment or other form of deprivation of liberty", it had been objected that they were necessary in order to cover the various systems of national law. The phrase had, nevertheless, been dropped in Article 5 and he therefore suggested that a reference to Article 2 would be advisable.

M. SEYMEN (Turkey), though his earlier proposals regarding Article 5 had not met with the approval of the Conference, felt bound to renew his efforts to secure a text acceptable to the Conference as a whole. The special defect of Article 5 was that it entailed no obligation, except for States which had enacted national legislation for the regulation of cultivation. On the other hand, States which had taken up such cultivation without considering it necessary to regulate production were under no obligation whatsoever under the article as at present drafted. He did not attach excessive importance to the enforcement of Article 5, and suggested that it might be preferable to suppress it; the result would be a more effective and more generally acceptable Convention.

Mr. DOWSON (United Kingdom) pointed out that, as the contracting parties could only be asked to provide for punishment, the concluding words of the article should be amended to read: "shall make severely punishable contravention thereof".

M. GORGÉ (Switzerland), Rapporteur, replying to the Turkish delegate's observations, regretted that M. Seymen had merely repeated his previous observations, without disposing of the detailed objections to the latter which had been raised during the discussion.

On the point of drafting raised by the United Kingdom delegate, he explained that the Drafting Committee had endeavoured to maintain the *status quo* and not to refer to any special measures. Mr. Dowson's proposal would make the wording of the article too rigid and would lead to inequalities. In view of the criticisms, more particularly of the delegate of India, the Drafting Committee had decided that any reference to special measures would be inappropriate.

Mr. HARDY (India) said that he preferred the amendment suggested by the United Kingdom delegate to the text of the Drafting Committee.

M. DELGORGHE (Netherlands) wished to associate himself with the remarks made by the delegate of Portugal.

M. DE VASCONCELLOS (Portugal) pointed out that the main difficulty in connection with Article 5 was that it represented an attempt to force States to apply an international regulation that was non-existent and to impose penalties that were not yet enacted. He recalled that, in accordance with a decision of the Assembly and Council, preparations were already being made by the Secretariat to convene a Conference on Raw Materials. Was it logical, therefore, in those circumstances, to include such a provision as Article 5 in the present Convention? The Portuguese delegate concluded by endorsing the drafting proposals made by the Polish delegate.

M. LATOUR (Brazil) stated that his country would vote for Article 5 solely with a view to conciliation, as it considered the provision embodied in it to be purely academic. The original provision in sub-paragraph 2 (b) of the draft Article 1, while not entirely adequate, was much preferable.

Mr. DOWSON (United Kingdom), in explanation of his proposal, pointed out that, legally, States could not agree to "punish"; they could only empower their courts to impose the maximum penalties. From a textual standpoint, therefore, the present article was unacceptable and he repeated his proposal to amend the last phrase to read, "shall likewise make severely punishable contraventions thereof".

Dr. HOO CHI-TSAI (China) disagreed with the view taken by the Portuguese delegate that there was no international regulation of production. Article 1 of the Hague Opium Convention made it obligatory for the contracting Powers to "enact effective laws or regulations for the control of the production and distribution of raw opium". An obligation to impose control had, therefore, been accepted as far back as 1912. The situation as regards manufactured drugs was similar. Under the 1931 Convention, States undertook, not to prohibit, but to regulate and control manufacture. It could not therefore be argued that there were no international obligations in this respect.

M. DE VASCONCELLOS (Portugal) did not propose to make a detailed comparison between the 1912 and 1925 Conventions. He would only repeat that the fact of the Assembly and Council of the League of Nations having instructed the Secretariat to prepare for a Conference on Raw Materials proved that the matter had not yet been settled.

The PRESIDENT asked the Conference to vote on Article 5 as amended by the United Kingdom delegate.

*Article 5, as amended, was adopted at a second reading.*

#### ARTICLE 6 (FORMER ARTICLE 2).

*In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 2 shall, subject to the conditions prescribed by the domestic law, be recognised for the purpose of establishing habitual criminality.*

*Article 6 was adopted at a second reading.*

#### ARTICLE 7 (FORMER ARTICLE 3) AND RECOMMENDATION No. 2.

##### *Article 7.*

1. *In countries where the principle of the extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of any of the offences referred to in Article 2, shall be prosecuted and punished in the same manner as if the offence had been committed in the said territory, even in a case where the offender has acquired his nationality after the commission of the offence.*

2. *This provision does not apply if, in a similar case, the extradition of a foreigner cannot be granted.*

##### *Recommendation No. 2.*

*The Conference recommends that countries which recognise the principle of extradition of their nationals should, as far as is practicable, grant the extradition of such of their nationals as, being in their territory, are guilty of the commission abroad of the offences dealt with in Article 2, even if the extradition treaty applicable contains a reservation on the subject of the extradition of nationals.*

Mr. DOWSON (United Kingdom) had suggested in the Drafting Committee that "punishable" should be substituted for "punished" in paragraph 1.

The PRESIDENT pointed out that this article referred to individual offenders and that full discretion was left to national courts, so that the suggested change was unnecessary.

M. DA MATTA (Portugal) raised the question of the recommendation regarding the same point. The Portuguese delegation's original proposal did not contain the words "as far as is practicable", which greatly weakened, not to say nullified, the effect of the recommendation. He therefore moved the deletion of the words in question.

Mr. DOWSON (United Kingdom) had suggested the inclusion of the words referred to as being in consonance with the facts of the case. He did not agree that they materially weakened the recommendation.

*On a vote being taken by a show of hands, the Portuguese proposal to delete the words "as far as is practicable" was approved by 10 votes to 4.*

*Article 7 and recommendation No. 2, as amended, were adopted at a second reading.*

#### ARTICLE 8 (FORMER ARTICLE 4).

*Foreigners who are in the territory of a High Contracting Party and who have committed abroad any of the offences set out in Article 2 shall be prosecuted and punished as though the offence had been committed in that territory, if the following conditions are realised—namely, that :*

(a) *Extradition has been demanded and could not be granted for a reason independent of the offence itself ;*

(b) *The law of the country of refuge considers prosecution for offences committed abroad by foreigners admissible as a general rule.*

*Article 8 was adopted at a second reading.*

#### ARTICLE 9 (FORMER ARTICLE 5).

1. *The offences set out in Article 2 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.*

2. *The High Contracting Parties who do not make extradition conditional on the existence of a treaty or on reciprocity shall, as between themselves, recognise the offences referred to above as extradition crimes.*

3. *Extradition shall be granted in conformity with the law of the country to which application is made.*

4. *The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if his competent authorities consider that the offence of which the fugitive offender is accused or convicted is not sufficiently serious.*

Dr. SCHULTZ (Austria) pointed out, in connection with this article, that certain States had already concluded Customs agreements in the matter of illicit traffic or smuggling which imposed on them more onerous duties and obligations in respect of extradition than were laid down in the present Convention.

He would like to be assured, therefore, that the extradition provisions of the new Convention in no way affected the wider obligations assumed by certain countries under existing extradition treaties.

The PRESIDENT confirmed that, as the treaties referred to by the Austrian delegate contained provisions which were not contrary to, but merely went further than, the provisions of the Convention under discussion, such treaties would continue to subsist.

*Article 9 was adopted at a second reading.*

GENERAL STATEMENT BY M. DA MATTA (Portugal), RAPPORTEUR FOR ARTICLES 3 AND 10 TO 27 OF THE REVISED TEXT OF THE DRAFT CONVENTION PREPARED BY THE DRAFTING COMMITTEE.

M. DA MATTA (Portugal), Rapporteur, gave a detailed description of the genesis of the final text of Article 3 and of Articles 10 to 27, stressing more particularly the following points :

*Article 3* : This article had been inserted mainly on the initiative of the Chinese and Egyptian delegations. A comparison with the text of the original Chinese proposal would show that, while the underlying idea was the same, the wording finally adopted was rather clearer.

*Article 10* was a complete recast of the old Article 6. The suggestion of the Czechoslovak delegation to include a reference to gains and profits had not been adopted and the Japanese amendment had been withdrawn, leaving only the amendments of the United States and Swiss delegations. The former of these dealt very fully with the question of criminal intent, but had not been adopted by the Conference. The Swiss amendment was substantially similar but much more categorically and succinctly worded. The text finally adopted would be seen to be a slightly less imperative version of the Swiss delegation's proposal.

*Article 11* also showed considerable changes as compared with the old Article 7. In paragraph 1, the opening phrase and the expression "if it has not done so already" had been dropped. The Portuguese delegation had proposed sweeping amendments for paragraph 2(e); however, after discussion, it had been decided to retain the original wording but to insert at the beginning the words "shall be in close contact with and" proposed by the United Kingdom delegation.

For paragraph 3, the Spanish delegation's proposal to insert a reference to regional authorities had been adopted, and the concluding words amended to read "in conformity with the constitutional or administrative system thereof".

In *Article 12*, paragraph 1, "The central office" had been substituted for "Each central office", to indicate that it was the *chief* central office in each country which would be responsible for the co-operation in question.

The Japanese proposal to insert "illicit" before "transactions" in paragraph 2(a) had been defeated and in paragraph 2(b) "Any particulars" had been felt to be a more suitable form of words than "The exact details".

Article 9 of the old draft had, at the suggestion of the Japanese delegation, been transferred to the Final Act where it figured as Recommendation 4. A proposal by the Austrian delegation to add to it a clause taken from Article 15 of the Counterfeiting Currency Convention had been defeated.

*Article 13* : In the course of a lengthy discussion of the new text of this article, it had been noted that, to the three different methods of transmission figuring in the first two drafts, the experts had, at the Japanese delegation's request, added a fourth method providing for transmission "through diplomatic channels". The first method being that most generally acceptable, the Drafting Committee thought that, following the precedent of the Counterfeiting Currency Convention, this should be indicated by inserting the word "preferably" at the beginning of sub-paragraph (a). If that method could not be adopted, the method in sub-paragraph (b), "by direct correspondence between the Ministers of Justice", etc., would be followed. If neither of those were feasible, the "semi-diplomatic" method indicated in sub-paragraph (c) would be adopted. To meet the wishes of the Japanese delegation, a new paragraph 2 had been introduced, reproducing the terms employed in the 1905 Convention on Civil Procedure. Paragraph 3 of the new Article 13 (old paragraph 2 of Article 10) made no reference to cases (a) and (b) as before

but only to case (c), as, in the former cases, it was obvious that no copy needed to be sent to the Ministry for Foreign Affairs.

At the end of the same paragraph, the words "or to such other authority as may be indicated by him" had been amended to read "or to the authority designated by such State", as the authority in question was not usually designated by the Minister for Foreign Affairs.

M. Gorgé had pointed out that some States did not have diplomatic representatives in every country and the expression "diplomatic or consular representative" had been adopted in paragraph 3 (old paragraph 2).

In paragraph 4 of the new Article 13 (paragraph 3 of the old Article 10), the Portuguese delegation's proposal to adopt the form of words employed in the Civil Procedure Convention had been accepted.

Articles 14 and 15 were the old Articles 11 and 12 unchanged. A proposal had been made by the United Kingdom delegation to add to Article 15 an interpretative clause based on an amendment originally submitted by the French delegation and on a similar clause in the Protocol to the Counterfeiting Currency Convention. After considerable discussion, it had finally been agreed to insert in the Final Act a special interpretative clause.

Article 16 was substantially the old Article 13.

In Article 17, it would be recollected that, on the suggestion of M. Gorgé, the text of Article 25 of the 1931 Limitation Convention had been substituted for that originally proposed and the words "or to some other court of arbitration" added at the end of paragraph 2.

Articles 18 to 26 of the formal clauses called for no comment, except as regards :

(1) Article 23 : As at present worded, this article was not satisfactory, as it was not clear how ratifications and accessions received in the ninety days' interval between the deposit of the tenth ratification or accession and the coming into force of the Convention would be dealt with. To avoid this break of continuity, the article should be amended to read :

"Ratifications or accessions received after the deposit of the tenth ratification or accession referred to in Article 22 shall take effect as from the expiration of the period of ninety days from the date of their receipt by the Secretary-General of the League of Nations."

(2) Article 26 : The changes proposed by the Irish Free State delegation had been adopted.

The *Final Act* : The first recommendation was based on the original amendment of the United States delegation and was approved by that delegation.

Recommendation No. 3 represented a recognition by the Conference of the merits of the proposals submitted by the Chilean and Cuban delegations regarding specialised police forces. The Portuguese delegation, in particular, had opposed the insertion of the proposals in the body of the Convention in view of the unnecessary financial burdens which it would entail for certain States and the Conference had accordingly agreed to its inclusion as a recommendation in the Final Act.

Proposals had also been brought forward in regard to adulteration of drugs (by the Spanish delegation) and measures for the protection of victims of the drug traffic (by the Chilean delegation), but the Conference had not, on mature consideration, thought it necessary to insert recommendations in the Final Act on these subjects.

#### RECOMMENDATION NO. 1.

The PRESIDENT proposed, before continuing the reading of the different articles, to take the first of the recommendations, which had been drawn up in connection with the suggestions put forward by the United States delegation. The recommendation read as follows :

##### 1. The Conference,

*Recalling that the international Opium Conference of 1912, determined to bring about the gradual suppression of the abuse of opium, inserted in the international Opium Convention of 1912 the following sixth article : "The Contracting Powers shall take measures for the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium, with due regard to the varying circumstances of each country concerned, unless regulations on the subject are already in existence";*

*Recalling that the parties to the Geneva Opium Agreement of 1925, in the Preamble, declared that they were fully determined to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium, as provided for in Chapter II of the international Opium Convention of 1912, in their Far Eastern possessions and territories, including leased or protected territories, in which the use of prepared opium is temporarily authorised; and that they were desirous, on the grounds of humanity and for the purpose of promoting the social and moral welfare of their peoples, of taking all possible steps for achieving the suppression of the use of opium for smoking with the least possible delay;*

*Desiring to take the opportunity afforded by the present Conference of urging the countries concerned to continue their efforts in this matter :*

*Recommends that Governments which still permit use of opium for other than medical or scientific purposes should, without undue delay, take effective action with a view to the abolition of such use of opium.*

Mr. HARDY (India) much regretted that after carefully studying the text of this recommendation, he was unable to accept it, for the reasons he had already explained.

If opium were used for no other purposes than medical and scientific ones, this recommendation would follow logically upon the considerations set forth in the opening paragraphs. That, however, was not the case. If his Government were to adopt this recommendation, it would have to enact that nobody must be supplied with opium without producing a certificate from a qualified medical practitioner. Such a system, no doubt, would work satisfactorily in the United States. There, anyone requiring a narcotic drug for relief of pain could obtain the necessary authorisation within half an hour. Matters were very different, however, for a man living perhaps in the heart of India who was suddenly seized by dysentery or by cholera, both of them very common complaints in that country. He might never even have heard of such a person as a doctor. Even if he knew of one, it might mean an exhausting journey of perhaps five or six days to reach him. At present, he merely went to the nearest opium shop, where he obtained the small dose allowed under the regulations and could thus at least get temporary relief, and might even save his life. That was the picture Mr. Hardy had in mind. He was unable, consequently, to agree to the recommendation.

M. GORGÉ (Switzerland) said that his Government, for the reasons he had stated at the second meeting, was not in a position to accept this recommendation.

*On a vote being taken, Recommendation No. 1 was adopted, 17 delegations voting for, and 4 against.*

#### ARTICLE 3 (NEW ARTICLE).

*The High Contracting Parties who possess an extra-territorial jurisdiction over the territory of another High Contracting Party undertake to enact the necessary legislative provisions for punishing such of their nationals as are guilty within their territory of any offence specified in Article 2 of the present Convention in the same manner as if the offence had been committed in their own territory.*

M. HOTTA (Japan) said that, as he had now received instructions from his Government, he was able to explain the attitude his delegation had so far been obliged to take in regard to this article.

The Chinese amendment had placed his delegation in a very difficult position, for its instructions had been not to accept any proposal which involved, either directly or indirectly, the question of extra-territoriality. The Chinese amendment had involved that question, although only very slightly, and he had at once requested his Government, therefore, for further instructions. As, at the time of the first reading, he had not yet received a reply, he had been obliged to keep silent and to vote against the proposal. In the opinion of his delegation, however, this proposal would not introduce any new factor into the present situation in China as regarded extra-territorial jurisdiction, or at any rate that exercised by Japan.

M. Hotta could assure the Conference that narcotic offences committed by Japanese in China were punished in the same manner as if they had been committed in Japan. It was true that the Japanese narcotic laws, which only provided for comparatively light penalties, had often been criticised. The Convention which was shortly to be signed contained, however, a solemn undertaking severely to punish traffickers in drugs. Where international undertakings were concerned, there should be no suggestion of mistrust, and this Convention should stand upon a basis of mutual confidence between all its signatories. Now that he had received instructions, he was glad to be able to state that his Government accepted this article.

Dr. HOO CHI-TSAI (China) thanked the Japanese delegate for his statement, which was in strict conformity with the assurance M. Hotta had given in the Advisory Committee that his Government intended fully to collaborate in suppressing the illicit traffic. He was very glad, therefore, that the Japanese delegate had withdrawn his objection to Article 3. Dr. Hoo was sure that the promised collaboration would prove very valuable and would be greatly appreciated by the Chinese Government.

He asked that in the phrase adopted by the Drafting Committee : " punishing . . . their nationals . . . in the same manner as if the offence had been committed on their own territory ", the words " in the same manner " should be replaced by the words " at least as severely ". These were the words which he had proposed in his original amendment. He had had in view the fact that the Greek Government had undertaken to punish its nationals, for narcotic offences committed in Egypt, more severely than if the offences had been committed in Greece. These words were in accordance with the general spirit of the Convention, which prescribed severity as the " manner " in which offences were to be punished. It was possible that countries exercising territorial jurisdiction in China might, in view of the vigorous campaign which was being undertaken in that country to eradicate the opium evil, similarly enact laws enabling their extra-territorial

courts to inflict more severe penalties for offences committed in China than were provided for under their domestic law. For that reason, Dr. Hoo preferred the words "at least as severely" to the words "in the same manner".

M. GORRA (Egypt) associated himself with this proposal.

The Chinese amendment had been based on the Egyptian amendment, but the latter had been much wider. On the Chinese amendment being adopted by a large majority, he had asked his Government for instructions. It had replied that he might sign the Convention if the Chinese amendment were included. He thought there could be no objection to keeping to the original wording of that amendment.

M. CONTOUMAS (Greece) recalled that his Government had enacted the special law concerning narcotic offences committed by its nationals in Egypt in the exercise of its own sovereignty and as a mark of friendship. Dr. Hoo Chi-Tsai seemed to imply that that concession was to be transformed into an obligation and that the law in question must remain in force. M. Contoumas could not, however, give any such guarantee. He did not wish to imply that his Government intended to repeal the law, but only to point out that it had not been compelled to enact it by any international undertaking.

M. DE REFFYE (France) thought that the words "at least as severely" would not be open to any objection, as they did not involve any definite obligation to inflict a penalty which was more severe than that provided under domestic law.

*Subject to that amendment, and certain minor modifications, Article 3 was adopted at a second reading.*

#### ARTICLE 10 (FORMER ARTICLE 6).

*Any narcotic drugs as well as any substances and instruments intended for the commission of any of the offences referred to in Article 2 shall be liable to seizure and confiscation.*

*Article 10 was adopted at a second reading.*

#### ARTICLE 11 (FORMER ARTICLE 7).

1. *Each of the High Contracting Parties shall set up, within the framework of its domestic law, a central office for the supervision and co-ordination of all operations necessary to prevent the offences specified in Article 2, and for ensuring that steps are taken to prosecute persons guilty of such offences.*

2. *This central office :*

(a) *Shall be in close contact with other official institutions or bodies dealing with narcotic drugs ;*

(b) *Shall centralise all information of a nature to facilitate the investigation and prevention of the offences specified in Article 2 ;*

(c) *Shall be in close contact with and may correspond direct with the central offices of other countries.*

3. *Where the Government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and local Governments, the supervision and co-ordination specified in paragraph 1 and the execution of the functions specified in (a) and (b) of paragraph 2, shall be carried out in conformity with the constitutional or administrative system thereof.*

4. *Where the present Convention has been applied to any territory by virtue of Article 18, the requirements of the present article may be carried out by means of a central office set up in, or for, that territory acting in conjunction, if necessary, with the central office in the metropolitan territory concerned.*

5. *The powers and the functions of the central office may be delegated to the special administration referred to in Article 15 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs of 1931.*

In reply to a question by Phya RAJAWANGSAN (Siam), with regard to the "official institutions" referred to in paragraph 2, sub-section (a), the PRESIDENT explained that the reference was to institutions, which might be other than governmental ones, within the country itself.

*Article 11 was adopted at a second reading.*

#### ARTICLE 12 (FORMER ARTICLE 8).

1. *The central office shall co-operate with the central offices of foreign countries to the greatest extent possible, in order to facilitate the prevention and punishment of the offences specified in Article 2.*



2. The office shall, so far as it thinks expedient, communicate to the central office of any country which may be concerned :

(a) Particulars which would make it possible to carry out any investigations or operations relating to any transactions in progress or proposed :

(b) Any particulars which it has been able to secure regarding the identity and the description of traffickers with a view to supervising their movements ;

(c) Discoveries of secret factories of narcotic drugs.

Article 12 was adopted at a second reading:

#### ARTICLE 13 (FORMER ARTICLE 10).

1. The transmission of letters of request relating to the offences referred to in Article 2 shall be effected :

(a) Preferably by direct communication between the competent authorities of each country, or through the central offices or,

(b) By direct correspondence between the Ministers of Justice of the two countries, or by direct communication from another authority of the country making the request to the Minister of Justice of the country to which the request is made, or,

(c) Through the diplomatic or consular representative of the country making the request in the country to which the request is made. For this purpose, the letters of request shall be sent by such representative to the authority designated by the country to which the request is made.

2. Each High Contracting Party may, by communication to the other High Contracting Party, express its desire that letters of request to be executed within its territory should be sent to it through the diplomatic channel.

3. In case (c), a copy of the letter of request shall, at the same time, be sent by the diplomatic or consular representative of the country making the request to the Minister for Foreign Affairs of the State to which application is made or to the authority designated by such State.

4. Unless otherwise agreed, the letter of request shall be drawn up in the language of the authority to which request is made or in a language agreed upon by the two countries concerned.

5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method, or methods, of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.

6. Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.

7. The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.

8. Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws or to execute letters of request otherwise than within the limits of their laws.

M. DE REFFYE (France) proposed to omit, in paragraph 3, the words "in case (c)". The Foreign Office should have copies of all letters of request, as these might involve questions of a political nature of which it would wish to be aware.

M. CONTOUMAS (Greece) pointed out that, under paragraph 5, each contracting party would notify to each of the other contracting parties the method it would recognise for the transmission of letters of request addressed to it, while, among the methods provided for under paragraph 1, transmission through diplomatic channels was included.

M. DA MATTA (Portugal) said that, if it were necessary in all cases for letters of request to be communicated to the Foreign Office of the country to which application was made, the procedure proposed would certainly not result in the expeditious transmission which the Conference desired. That would certainly be the case as regards his own country, and no doubt similar considerations applied elsewhere.

M. DE REFFYE (France) would not press his proposal.

M. CONTOUMAS (Greece) asked that the words "the authority designated", in subparagraph (c) of paragraph 1, should read "the competent authority designated".

He proposed to omit, in paragraph 3, the concluding words "or to the authority designated by such State", as that provision was covered by the section to which he had just referred.

*M. Contoumas' second proposal was adopted.*

*Article 13 was adopted at a second reading.*

#### PREAMBLE.

*The High Contracting Parties,*

*Having resolved, on the one hand, to strengthen the measures intended to prevent infringement of the provisions of the International Opium Convention, signed at The Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs, signed at Geneva on July 13th, 1931, and, on the other hand, to prevent and punish, by the methods most effective in the present circumstances, the illicit traffic in the drugs and substances covered by the above Conventions,*

*Have appointed as their plenipotentiaries:*

*who, having produced their full powers found in good and due form, have agreed on the following provisions:*

M. DA MATTA (Portugal) said the Drafting Committee had recognised that it would be difficult for States which had not signed one or other of the previous Conventions to accept a text which implied that it was on the provisions of those Conventions that the present Convention was based. The Yugoslav delegate, whose Government had not signed the 1931 Convention, had proposed an amended text. It had been recognised, however, that an amendment to the Preamble alone would not solve the difficulty, as it would also be necessary to omit the reference to the previous Conventions in Articles 1 and 2. After careful consideration, the Drafting Committee had agreed to accept the text proposed by the Committee of Experts.

Dr. HOO CHI-Tsai (China) thought it incorrect to speak of "measures intended to prevent infringement of the provisions" of the Conventions. Private persons could infringe a law, but not the provisions of a Convention. He suggested that the words "measures intended to prevent infringement of" should be replaced by the words "measures for ensuring the application of".

The PRESIDENT suggested that the Committee of Jurists should agree upon a form of words which would meet this objection.

*The President's proposal was adopted.*

*The continuation of the discussion was adjourned to the next meeting.*

#### 34. Examination and Adoption of the Second Report of the Credentials Committee.

M. PFLÜGL (Austria), Chairman of the Credentials Committee, read the following report:

"The Committee appointed to verify the credentials of the delegates to the Conference held a further meeting on June 24th, 1936, at 3.30 p.m., to examine the additional documents which had been presented by the delegations and had been communicated to it by the Secretariat.

"It noted that the delegates of the following States have produced full powers<sup>1</sup> from the head of States: Canada, France, Liechtenstein, Portugal, Spain, Switzerland, Union of Soviet Socialist Republics, Uruguay.

"The full powers of these countries cover both the negotiations and the signature of the instruments to be concluded.

"The Yugoslav delegate presented full powers from the President of the Council of Ministers, Minister for Foreign Affairs, to take part in the work of the Conference.

"The Venezuelan delegate, by his letter of June 15th, 1936, replied to the question raised by the Conference at the time of the adoption of the report of the Credentials Committee,<sup>1</sup> that his full powers were to be interpreted as authorising him to sign.

"The Panama delegate informed the Committee by his letter of June 12th, 1936, that he regarded himself as authorised to sign *ad referendum* the instruments to be concluded:

"The Government of the United States of Mexico communicated, by telegram to the Secretary-General of the League of Nations, that the President of the Republic had given its delegate the necessary full powers to sign the Convention to be concluded, and that it would forward by post the confirmatory document.

"The Committee holds that this delegate is authorised to sign the agreements to be concluded, provided, however, that he presents full powers in the usual form.

<sup>1</sup> See page 36.

"The Norwegian delegate informed the Committee that he had been given full powers to take part in the work of the Conference, but that he was not authorised to sign the instruments to be concluded.

"The Committee requests the Conference again to ask the delegate of the Republic of Honduras to be so good as to inform it whether his full powers are to be interpreted as authorising him to sign the Convention.

"The Committee also ventures to request the Conference to remind the delegates of the following States of the necessity of providing themselves with the necessary documents for signing the instruments to be concluded: Afghanistan, Bulgaria, Chile, Cuba, Czechoslovakia, Hungary, Iraq, Nicaragua, Peru, Turkey, Yugoslavia."

*The conclusions of the report were adopted.*

## TWENTY-SIXTH MEETING.

*Held on Wednesday, June 24th, 1936, at 9.30 p.m.*

*President: M. LIMBURG.*

### 35. Examination, at a Second Reading, of the Draft Convention: Revised Text prepared by the Drafting Committee<sup>1</sup> (continuation).

#### PREAMBLE (continuation).

*The preamble was adopted in the following form:*

" . . . . .  
"Having resolved, on the one hand, to strengthen the measures intended to penalise offences contrary to the provisions of the International Opium Convention signed at The Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs signed at Geneva on July 13th, 1931, and, on the other hand, to combat by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above Conventions,

"Have appointed as their Plenipotentiaries:

" . . . . .  
who, having produced their full powers, found in good and due form, have agreed on the following provisions: "

#### ARTICLES 14, 15 AND 16 (FORMER ARTICLES 11, 12 AND 13).

##### Article 14.

*The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that party's attitude on the general question of criminal jurisdiction as a question of international law.*

##### Article 15.<sup>2</sup>

*The present Convention does not affect the principle that the offences referred to in Articles 2 and 5 shall, in each country, be defined, prosecuted and punished in conformity with the general rules of its domestic law.*

##### Article 16.

*The High Contracting Parties shall communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and also an annual report on the working of the Convention in their territories.*

*Articles 14, 15 and 16 were adopted at a second reading.*

#### ARTICLE 17 (FORMER ARTICLE 14).

*If there should arise between the High Contracting Parties a dispute of any kind relating to the interpretation or application of the present Convention and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in*

<sup>1</sup> Document Conf.S.T.D.39. For the final text of the Convention as adopted by the Conference, see Annex 6.

<sup>2</sup> See also the text of the interpretation of this article adopted later in the meeting (see page 171).

accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement. In the absence of agreement on the choice of another tribunal, the dispute shall, at the request of any one of the Parties, be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Statute of that Court, and, if any of the Parties to the dispute is not a Party to the Protocol of December 16th, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes or to some other court of arbitration.

Article 17 was adopted at a second reading, subject to the omission, at the end of the last paragraph of the words "or to some other court of arbitration".

#### ARTICLES 18, 19, 20 AND 21 (FORMER ARTICLES 15, 16, 17 AND 18).

##### Article 18.

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligation in respect of all or any of his colonies, protectorates and overseas territories under suzerainty or mandate, and the present Convention shall not apply to any territories named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he declares that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time after the expiration of the period of five years mentioned in Article 21, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates, and overseas territories or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. The Secretary-General shall communicate to all the Members of the League and to the non-member States mentioned in Article 19, all declarations and notices received in virtue of this article.

##### Article 19.

The present Convention, of which the French and English texts shall both be equally authoritative, shall bear this day's date, and shall, until December 31st, 1936, be open for signature on behalf of any Member of the League of Nations, or of any non-member State which received an invitation to the Conference which drew up the present Convention, or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

##### Article 20.

The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League and to the non-member States referred to in the preceding article.

##### Article 21.

1. As from January 1st, 1937, the present Convention shall be open to accession on behalf of any Member of the League of Nations or any non-member State mentioned in Article 19.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in that article.

Articles 18, 19, 20 and 21 were adopted at a second reading.

#### ARTICLE 22 (FORMER ARTICLE 19).

The present Convention shall come into force ninety days after the Secretary-General of the League of Nations has received the ratifications or accessions of ten members of the League of Nations or non-member States.

M. GORGÉ (Switzerland) observed that Article 26<sup>1</sup> was an exact repetition of Article 22 with the addition of the words "it will enter into force on that date". In order to avoid this repetition he proposed that Article 26 should be omitted and that the following sentence should be added to Article 22.

"It shall be registered on that date by the Secretary-General of the League of Nations. In this way, Article 22 would also contain the substance of Article 26.

*M. Gorgé's proposals were adopted.*

*Article 22, as amended, was adopted at a second reading.*

#### ARTICLE 23 (FORMER ARTICLE 20).

*Ratifications or accessions received after the date of the coming into force of the present Convention shall take effect as from the expiration of the period of ninety days from the date of their receipt by the Secretary-General of the League of Nations.*

*The Conference decided to replace the expression "after the date of the coming into force of the present Convention" by the following: "after the deposit of the tenth ratification or accession".*

*Article 23, as amended, was adopted at a second reading.*

#### ARTICLE 24 (FORMER ARTICLE 21).

1. *After the expiration of five years from the date of the coming into force of the present Convention, it may be denounced by an instrument in writing, deposited with the Secretary-General of the League of Nations. The denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations and shall operate only as regards the Member of the League or non-member State on whose behalf it has been deposited.*

2. *The Secretary-General shall notify all the Members of the League and the non-member States mentioned in Article 19 of any denunciations received.*

3. *If, as a result of simultaneous or successive denunciations, the number of Members of the League and non-member States bound by the present Convention is reduced to less than ten, the Convention shall cease to be in force as from the date on which the last of such denunciations shall take effect in accordance with the provisions of this article.*

*Article 24 was adopted at a second reading.*

#### ARTICLE 25 (FORMER ARTICLE 22).

*A request for the revision of the present Convention may at any time be made by any Member of the League of Nations or non-member State bound by this Convention by means of a notice addressed to the Secretary-General of the League of Nations. Such notice shall be communicated by the Secretary-General to the other Members of the League of Nations or non-member States bound by this Convention, and, if endorsed by not less than one-third of them, the High Contracting Parties agree to meet for the purpose of revising the Convention.*

M. CONTOMAS (Greece) thought that, if the Conference agreed to introduce a clause providing for the revision of the Convention, a time-limit should be fixed. According to the present text of Article 25, a request for a revision of the present Convention might be made at any time, so that revision might be asked for shortly after the coming into force of the Convention. The Convention, however, called for a trial period of at least two or three years. He therefore proposed that the words "at any time" should be omitted, and that the article should begin on the following lines:

"On the expiry of a period of two or three years, a request for revision of the present Convention may be made . . ."

M. GORGÉ (Switzerland) thought there was no danger of a premature request for revision, because Article 25 laid down that the request for revision must be endorsed by not less than one-third of the signatories. It was very unlikely that eighteen States would ask for the convening of a new Conference before several years had elapsed.

*Article 25 was adopted at a second reading.*

#### ARTICLE 26 (FORMER ARTICLE 23).

*The present Convention shall be registered by the Secretary-General of the League of Nations ninety days after the receipt by the Secretary-General of ten ratifications and accessions. It will enter into force on that date.*

In accordance with the decision taken in connection with Article 22<sup>2</sup>, Article 26 was omitted.

<sup>1</sup> See below.

<sup>2</sup> See above.

ARTICLE 27 (FORMER FINAL ARTICLE).

*This Convention shall be cited as the "Illicit Traffic in Drugs Convention, 1936".*

*The Conference decided to omit article 27.*

*It further decided that the Convention should bear the following title :*

*"Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs."*

*The Convention, as a whole, was adopted (Annex 6).*

36. Examination of the Final Act of the Conference.<sup>1</sup>

PREAMBLE.

*The Governments of . . . . .*

*Having received the invitation extended to them in execution of a resolution adopted by the Council of the League of Nations on January 20th, 1936, for the purpose of concluding a Convention for the Suppression of the Illicit Traffic in Dangerous Drugs :*

*Have appointed the following delegates :*

*. . . . .*

*In the course of a series of meetings between June 8th and June 26th 1936, the following Convention was drawn up : "Convention for the Suppression of the Illicit Traffic in Dangerous Drugs."*

*The Preamble of the Final Act was adopted, with minor drafting amendments.*

RECOMMENDATIONS FOR INCLUSION IN THE FINAL ACT.

The PRESIDENT reminded the Conference that the first and second recommendations had already been adopted.<sup>2</sup>

RECOMMENDATION NO. 3.

*3. The Conference recommends the High Contracting Parties to examine the expediency of creating a specialised police service for the purposes of the present Convention.*

The PRESIDENT recalled that this recommendation had been inserted at the request of the Spanish, Cuban and Chilean delegations.

M. CASARES (Spain) proposed that the words "examine the expediency" should be omitted.

M. JIMENEZ (Chile) seconded the Spanish delegate's proposal.

M. DOWSON (United Kingdom) pointed out that if the words "examine the expediency" were omitted, then, to restore the balance, the expression "in countries where this is necessary" should be inserted after the word "creating"; otherwise, he would not be able to accept the omission requested by M. Casares.

M. GORGÉ (Switzerland) said he could not agree to recommend twenty-five cantonal Governments, each to create a special police service for suppressing the illicit traffic.

M. CASARES (Spain) explained that, in his original proposal, he had not asked that the word "create" be used. He had proposed the term "appoint", which would avoid many objections by various countries. The draft recommendation submitted to the Drafting Committee was a compromise as compared with the three amendments originally proposed by the Spanish, Cuban and Chilean delegations to the effect that that principle should be included in an article of the Convention. It was in a spirit of conciliation that the three delegations had agreed to transform their amendments into a recommendation. But the text of the recommendation which the Conference had before it was so cold a response to the spirit of conciliation shown by the authors of the amendments that the latter would be obliged to revert to their initial proposal.

After an exchange of views, *the third recommendation was adopted in the following form :*

*"The Conference recommends the High Contracting Parties to create, where necessary, a specialised police service for the purposes of the present Convention."*

<sup>1</sup> Document Conf.S.T.D.39. For the final text of the Final Act, see Annex 8.

<sup>2</sup> See pages 162 and 159.

RECOMMENDATION NO. 4.

4. *The Conference recommends that the Advisory Committee on Traffic in Opium and Other Dangerous Drugs should, from time to time, consider the question whether it is desirable that meetings of the representatives of the central offices of the High Contracting Parties should take place in order to ensure, improve and develop international co-operation as provided for in the present Convention, and, should occasion arise, to give an opinion to the Council of the League of Nations on the subject.*

*Recommendation No. 4 was adopted, subject to the omission of the words "from time to time".*

ADULTERATION OF DRUGS: QUESTION OF A RECOMMENDATION TO BE INSERTED IN THE FINAL ACT.

The PRESIDENT reminded the Conference that M. Casares had made a suggestion concerning the adulteration of drugs<sup>1</sup> and had agreed to refer the matter to the Committee of Jurists. That Committee had come to the conclusion that the adulteration of narcotic drugs could not form the subject of a recommendation to be appended to the Convention, the question being a very delicate one, owing to the present state of criminal law and national laws in general.

M. CASARES (Spain) explained that the suggestion had been put forward at one of the meetings of the Advisory Committee,<sup>2</sup> and the Advisory Committee had instructed one of its members to submit it to the Conference. He noted that the Conference had concluded that the question of the adulteration of narcotic drugs did not come within its purview.

*The Conference decided not to make a recommendation on the question of the adulteration of drugs.*

DRUG ADDICTION: QUESTION OF A RECOMMENDATION TO BE INSERTED IN THE FINAL ACT.

The PRESIDENT reminded the Conference that a recommendation concerning addiction had been proposed by the Chilean delegate.<sup>3</sup> That recommendation had been examined by the Drafting Committee consisting of jurists, which, though entirely in agreement with the underlying idea, had concluded that it was not a matter within the purview of the present Conference.

M. JIMENEZ (Chile) said that, contrary to the opinion expressed by the Committee of Jurists, the question of addiction was closely connected with the aim of the Conference, which was to ensure that effective legal measures be taken to punish drug trafficking. The Conference should remember that an addict was almost always a trafficker or an accomplice of smugglers and that ordinary laws did not allow of his punishment. An addict left to himself spread his vice around him, and when he was no longer able to purchase drugs, became himself a clandestine supplier, a sort of smuggler intimately connected with the activities of international traffickers. That was why the Chilean delegate had ventured to draw the Conference's attention to the problem of addiction. The Conference, with its great technical and moral authority, ought to adopt a resolution to be used as a basis for a careful study, at the earliest possible date, of this aspect of the drug problem.

The question of addiction, by reason of its universality, called for action under the auspices of the most competent organs of the League, and more particularly by the Council.

Addicts formed a baneful element in the community. They were useless as individuals; they begot degenerate children and propagated their own vice. As drug consumers they indirectly stimulated over-production in those substances, for which there was always a market owing to the activities of smugglers. Addicts and smugglers, therefore, worked hand in hand. Each encouraged and stimulated the other, as was confirmed by the figures for the clandestine traffic in drugs. Moreover, addicts were almost always irresponsible persons. Finally, addiction was a disease that could be cured only by rigorous isolation treatment and severe rationing of the drug. Treatment at home or at a private medical establishment offered no guarantee of success, because the addict almost invariably disobeyed his instructions, with the complicity of his immediate associates, or left the curative institution if he were not supplied with the drug in such quantities as he desired.

It was, therefore, the duty of the State to protect addicts who had lost their will-power and all sense of the realities of life, by taking them away from their surroundings in order to cure them both physically and morally, and to preserve society from the immense harm done to it, mainly by vice propaganda and smuggling. At present, laws made provision for the isolation of addicts only when they had lost their reason or committed an offence punishable with imprisonment. Would it not be possible to promulgate in all countries a law for the compulsory isolation of addicts for effective treatment? That would be a measure for the protection of society, similar to the compulsory isolation of persons suffering from infectious diseases dangerous to public health. In order, however, that the idea of the internment of addicts for treatment might have a greater chance of acceptance, the measure ought either to be suggested and supported by authoritative international bodies or be imposed under international conventions.

<sup>1</sup> See pages 85-87.

<sup>2</sup> See the Report of the Advisory Committee to the Council on the Work of its Twenty-first Session, document C.278.M.168.1936.XI, pages 5 and 6.

<sup>3</sup> See page 145.



For all these reasons, M. Jimenez had proposed the inclusion in the Final Act of a recommendation to the effect that addicts should be interned and provided with medical treatment.

M. BENAVIDES (Uruguay) thought the proposed recommendation was very interesting, and regretted that the Drafting Committee had not been able to accept it. The Pan-American Conference at Santiago de Chile had unanimously adopted a similar recommendation.

M. DELGORGE (Netherlands) had listened with great interest to the Chilean delegate's statement. He reminded the Conference that the Advisory Committee had decided to study addiction and was collecting information on the subject. He could assure the Chilean delegate that the question was not being overlooked.

Dr. HOO CHI-TSAI (China) associated himself with the Uruguayan delegate's remarks and hoped that the question of addiction would not be overlooked.

M. CASARES (Spain) said that the Chilean delegate's statement had proved that there was a close connection between addiction and the suppression of the illicit traffic. Addicts were to be regarded as instigators and propagators of their vice. He was in favour of referring the question to the Advisory Committee.

Dr. CHODZKO (Poland), as acting Chairman of the Advisory Committee, spoke in favour of the Chilean delegate's proposal, which he entirely supported, and requested the Conference to refer the matter to the Advisory Committee.

The PRESIDENT noted that several delegates had spoken in favour of the Chilean delegation's proposal, but that the Drafting Committee, composed of jurists, had unanimously decided that the subject of the recommendation did not come within the purview of the Convention.

With regard to the proposal to refer the question of addiction to the Advisory Committee, it should be noted that the question was already before the Committee, and the latter had undertaken to study it. Furthermore, the Conference had no power to refer a question to the Advisory Committee. The Committee would, however, take cognisance of the Minutes of the Conference.

*The Conference decided not to make a recommendation concerning addiction.*

#### INTERPRETATIONS TO BE INSERTED IN THE FINAL ACT.

The PRESIDENT recalled that the first interpretation had been adopted at a previous meeting.<sup>1</sup>

##### *Interpretation No. 2.*

*2. Article 15 is to be interpreted in the sense that the Convention does not in particular affect the liberty of the High Contracting Parties to regulate the principles under which mitigating circumstances may be taken into account.*

*The second interpretation was adopted.*

*The Final Act as a whole was adopted (Annex 8).*

#### 37. Examination of the Protocol of Signature.<sup>2</sup>

##### RESERVATIONS.

The PRESIDENT, as was customary, asked the Conference to decide what reservations might be made on the occasion of signing the Convention.

##### *Reservation to Article 9 proposed by the Chinese Government.*

"So long as the Consular jurisdiction still enjoyed by the nationals of certain Powers in China is not abolished, the Chinese Government is unable to assume the obligations resulting from Article 9, involving a general undertaking by the Contracting Parties to grant the extradition of foreigners guilty of the offences referred to in that article."

*The Conference decided that it was permissible for China to make the above reservation, which would be inserted in the Protocol of Signature.*

##### *Reservation to Article 2 proposed by the Bulgarian Government.<sup>3</sup>*

"At the moment of signing the present Convention, the Government of Bulgaria reserves its right to apply the penalties referred to in Article 2, solely to such of the offences specified in (a) to (d) of the said article as by reason of their seriousness would be liable to imprisonment or other penalties of deprivation of liberty consistently with the fundamental rules of penal law in the Kingdom. It will impose fines or other lighter penalties for offences of minor importance."

<sup>1</sup> See page 162.

<sup>2</sup> For the final text of the Protocol of Signature, see Annex 7.

<sup>3</sup> Document Conf.S.T.D.40 (see also page 153).

The PRESIDENT pointed out that Article 2 was the fundamental article of the Convention. If a Government felt obliged to reserve the right not to apply that Article in its entirety, it would be better, rather than make the reservation in question, not to sign the Convention.

M. GORGÉ (Switzerland) thought the Bulgarian reservation would not in any way impair the Convention. Under that reservation, the Bulgarian Government would still act in conformity with the spirit of the Convention, applying penalties graduated according to the offences. The Bulgarian Government proposed to apply severe penalties solely to such offences as would, by reason of their seriousness, involve liability under Bulgarian law to imprisonment or other penalties entailing deprivation of liberty, and to impose fines or other lighter penalties for offences of minor importance. The Conference should explain to the Bulgarian Government that its reservation was not necessary, and ask it to withdraw it. Otherwise, if Bulgaria made the reservation, all the other States would be obliged to make a like one.

M. CONTOUMAS (Greece) thought the text of the reservation was not sufficiently clear to enable the question to be settled in the way M. Gorgé proposed. The reservation was due, he believed, to a misunderstanding. The Bulgarian Government spoke of "the penalties referred to in Article 2". That article, however, did not mention penalties for each offence any more than it obliged the contracting parties always to punish those acts by imprisonment as the Bulgarian delegation seemed to think. If the Bulgarian Government gave Article 2 its true interpretation, it would not make any reservation, since "severely punishing, particularly by imprisonment" did not mean that the slightest offences must necessarily be punished by imprisonment. Severity was required, but within reason. Thus, in certain cases, a fine might even be sufficient from the standpoint of the severe punishment of offences relating to drugs.

M. KOUKAL (Czechoslovakia) agreed with M. Gorgé. If the Conference allowed the Bulgarian reservation, M. Koukal also would have to make a reservation in connection with Article 2. That would relate, in his case, to the right to define the punishable acts, specified in that article, in conformity with the principles of national law.

M. SILIANOFF (Bulgaria) thanked M. Gorgé for his explanations, which defined the scope of Article 2. Had he been able to inform his Government of the articles to which he had been referred, and of the views expressed in the Conference, his Government would probably have changed its attitude; but, owing to lack of time, he had been unable to give that information to the Department concerned. He could not withdraw his reservation unless the Conference declared, by means of an interpretation or in any other manner it thought fit, that the substance of the reservation was contained by implication in the text of Article 2, or was covered by Article 15 of the Convention.

The PRESIDENT thought the Conference could not give the interpretation requested, since several delegations had shown that the meaning of the reservation was ambiguous.

M. CASARES (Spain), speaking on a point of order, proposed that the discussion be closed, as otherwise the whole Convention would have to be reconsidered.

On a vote being taken, *M. Casares' proposal was adopted by 15 votes to 3.*  
(The discussion was closed.)

M. CONTOUMAS (Greece), also speaking on a point of order, said that the Conference could not take a vote on the Bulgarian reservation when the Bulgarian delegate had just stated that, if the Conference were to interpret Articles 2 and 15 in a manner which would meet his Government's objections, it would be prepared to withdraw its reservation.

The PRESIDENT did not consider that a point of order arose. The Conference could not give the interpretation requested of it, since the discussion was closed. He would ask the Conference to vote on the Bulgarian reservation.

*The reservation was rejected by a majority of votes.*

*Reservation to Article 2, sub-paragraph (c), proposed by the Netherlands Government.*

M. DELGORGE (Netherlands) said that M. van Angeren had explained at an earlier meeting<sup>1</sup> the reason why the Netherlands delegation must make a reservation to Article 2, sub-paragraph (c), in connection with the word "conspiracy".

M. DE REFFYE (France) said his country was in the same position as the Netherlands, since the wording of sub-paragraph (c) of Article 2 was inconsistent with the principles of French law. Nevertheless, prompted by a spirit of conciliation, the French delegation accepted the clause.

M. DELGORGE (Netherlands) said his country could only sign the Convention subject to the reservation in question.

<sup>1</sup> See page 73.

On a vote being taken, *the reservation proposed by the Netherlands delegation was rejected by 14 votes to 1.*<sup>1</sup>

M. GORGÉ (Switzerland), speaking on behalf of all the delegations, expressed the hope that the Netherlands delegation would do its utmost to persuade its Government to adapt its legislation to the Convention. A great many States were in the same position as the Netherlands. He was sure he was interpreting the feelings of all the members of the Conference in expressing the hope that the valuable collaboration of the Netherlands would not be withheld.

*Attitude of Norway to the Convention.*

M. MASENG (Norway) said that as there was very little illicit traffic in Norway, and, as the Convention would necessitate the introduction of changes in the domestic law and of other measures, his Government was not at present in a position to sign the Convention. Naturally, however, in all matters where the Convention was concerned, his Government would act upon the principle on which the Convention was based.

*The Protocol of Signature was adopted (Annex 7).*

Mr. FULLER (United States of America) said that his delegation, not having any instructions in the matter, could neither accept nor reject the reservations, of whatever nature, presented by any Government.

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TWENTY-SEVENTH MEETING.

*Held on Friday, June 26th, 1936, at 10.30 a.m.*

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*President : M. LIMBURG*

38. Examination of the Protocol of Signature<sup>2</sup> (continuation).

*Reservation to Article 2, sub-paragraph (c), proposed by the Netherlands Government (continuation).*

The PRESIDENT informed the Conference that the delegate of the Netherlands desired to raise again the question of its reservation submitted at the last meeting.<sup>3</sup>

M. DELGORGÉ (Netherlands) had been urged by some of his colleagues to word the reservation of the Netherlands Government to Article 2, sub-paragraph (c), in a less general manner, so as to enable it to be accepted by the rest of the Conference and to ensure the signature of the Convention by the Netherlands Government. Owing to the special structure of Netherlands legislation in the matter of penal law, the Netherlands Government could not accept the sub-paragraph in question, but, moved by its customary spirit of co-operation, it had re-considered the matter and now proposed the following reservation :

“ That the Netherlands makes its acceptance of the Convention subject to the reservation, that, according to the basic principles of penal law in the Netherlands, it is able to comply with sub-paragraph (c) of Article 2 only in circumstances where there is a commencement of execution.”

If the Conference accepted the reservation as now worded, his Government would be glad to sign the Convention; otherwise it would be obliged to abstain. In conclusion, if his proposal could not be settled without discussion, he was prepared to withdraw it.

The PRESIDENT asked the Conference to vote on the text of the reservation submitted by the Netherlands Government, the scope of which had been considerably restricted.

On a vote being taken by a show of hands, *the Netherlands reservation was accepted by 23 delegations.*

*The Netherlands reservation was adopted.*

M. DELGORGÉ (Netherlands) thanked the Conference for agreeing to accept his Government's reservation.

*General Reservation proposed by the Government of India.*

Mr. HARDY (India) reminded the Conference that, during the first reading and discussion of Article 15,<sup>4</sup> he had pointed out that the Government of India would have to enter a reservation regarding the Indian States and the Shan States forming part of British India and had explained

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<sup>1</sup> See also below.

<sup>2</sup> For the final text of the Protocol of Signature, see Annex 7.

<sup>3</sup> See page 172.

<sup>4</sup> See pages 147 and 148.

that the reservation proposed would not substantially affect India's participation in the application of the Convention. The question now to be decided was when this reservation should be entered. If it were made by the Government of India when ratifying the Convention, the various signatories would have to be notified individually, a rather cumbersome procedure. Alternatively, it might be argued that the case was covered by the provisions of Article 18, but a certain doubt existed as to whether those provisions were perfectly applicable in the case of the States concerned. The best procedure, therefore, would apparently be to enter the reservation in the Protocol which was about to be signed. He would therefore suggest the acceptance by the Conference of the following reservation on the part of the Government of India :

"India makes its acceptance of the Convention subject to the reservation that the said Convention does not apply to the Indian States or to the Shan States (which are part of British India)."

*The Indian reservation was adopted.*

### 39. Signature of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of the Final Act and of the Protocol of Signature.

Dr. CHODZKO (Poland), on a point of order, said that no final text of the draft Convention as adopted at the second reading had yet been circulated. He questioned, therefore, whether he would be in a position to sign the Convention.

The PRESIDENT explained that it was not customary to circulate the printed text of Conventions before signature. To satisfy the delegate of Poland, however, the whole of the printed text of the Convention, Final Act and Protocol of Signature would be read.

*The Convention, Final Act and Protocol of Signature were read.*

Mr. FULLER (United States of America) made the following statement :

As you will recall, from the statement which I made shortly after the opening of this assembly,<sup>1</sup> the American Government sent delegates to participate in the work of this Conference on the understanding that the task of this body was to draft a Convention which would (1) strengthen the measures at present available to prevent infringement of the principles laid down in the Opium and Drug Conventions and (2) provide international agreement to prevent and to punish in an effective and deterrent manner the illicit traffic in narcotic drugs, whether raw or refined.

We hoped that the Conference would enlist the increased co-operation of other Governments in the international effort to suppress the abuse of narcotic drugs, particularly in the suppression of all kinds of illicit transactions in opium and its derivatives, in coca and its derivatives and in cannabis and its derivatives.

With that end in view, the American delegation drew up and presented to the Conference certain carefully thought-out suggestions which we felt would modify the draft text in a way to promise real and practical results.

The Convention now presented to us for signature, however, contains a number of stipulations which the American Government finds itself quite unable to accept and I rise to place on record and to present to you the American delegation's statement concerning the features which render this Convention unacceptable.

Law enforcement officers the world over know from experience that the first object for them to attain in combating and preventing crime is to deprive the criminal of the profits of his illegal acts. The Convention contains no stipulation in regard to this. This Conference rejected a proposal for such a provision and must assume the responsibility for that omission.

The American delegation placed before the Conference its view that embodying in the Convention a specific enumeration of acts required to be penalised as criminal offences was not practicable and would lead to the very difficulties which have occupied the time of this Conference for days past—that is, questions arising from the difficulty of precisely setting forth these offences in such a way that the description would accord with all the different systems of law.

We also pointed out the inadvisability, from a practical point of view, of undertaking to dictate thus in detail to legislative assemblies.

We regret that the Conference did not see fit to adopt our suggestions, which would have bound each contracting party to enact, *within its own framework of law*, measures to punish illicit traffic severely and measures designed to aid the officers of the law in their efforts to suppress that traffic.

Such frequent reference has been made in the course of the Conference to the Multilateral Treaty for the Suppression of Counterfeiting Currency that it seems pertinent to present a few observations in regard to the bearing which it has been assumed that that Convention has upon the one which we are now asked to sign. Aside from the fact that the connection between falsifying money and poisoning one's fellow man, if it exists at all, is at best tenuous, we cannot forget that the Counterfeiting Currency Convention, signed over seven years ago, has to date been ratified

<sup>1</sup> See pages 23 and 24.

or acceded to by only twenty-three Governments. Only three Governments in the Americas have ratified or acceded to it. For reasons constitutional and otherwise, much the same as those which preclude my Government from subscribing to the Convention now presented for signature, the American Executive has not presented the Counterfeiting Currency Convention to the Senate of the United States for consent to ratification. Of the components of the British Empire, we understand that only one, the Irish Free State, has ratified that Convention. We also understand that another one of the great Powers, France, has not yet ratified it.

As we have already informed the Conference, it is our view that the offences enumerated in the draft Convention are not set forth with sufficient precision to afford a clear and legally adequate basis for the legislation necessary to make their prosecution possible.

Law officers of the American Government have held that the embodiment in the Convention of this list of offences would compel the American Government to replace its existing system of control, prevention and prosecution—a system which has proved its worth and has received thorough interpretation in the courts—by a much weaker system largely devised by those who state that their Governments have no illicit traffic problem.

Those who have had ample experience in the actual handling of this problem were in attendance at the Conference and presented the results of that experience, but in few instances does it appear that that experience was taken into account.

We had hoped that the Convention would be drafted in such a way as to provide a legally adequate basis for the legislation necessary to make possible the punishment of illegal cultivation and gathering of cannabis, a drug the increasing menace of which is causing apprehension throughout the world. The Convention now presented for signature will afford no constitutional basis for federal prosecution in the United States of such offences in respect of which we must, therefore, continue to rely on the efforts of forty-eight States.

The American delegation stated, in explaining its proposed amendment of the extradition article, that it considered the final paragraph thereof to be practically a nullification of the entire article. That paragraph vests discretion in any Government to refuse a request for extradition on the sole ground that the contracting party or its proper tribunal considers that "the offence of which the fugitive offender is accused or convicted is *not sufficiently serious*".

When consideration is given to the fact that a number of Governments do not appear to consider as "serious" offences which many nations punish by very severe penalties, it will be apparent that the final paragraph of the extradition article would render that article practically worthless as a basis for extraditing narcotics offenders from any country which is disposed to deal lightly with such offences.

As we have pointed out to the Conference, we consider that the first paragraph of the extradition article raises a serious question as to the effect of the Convention on existing and future extradition agreements.

In our opinion, the effect of the Convention now presented for signature would be to inject uncertainty into the interpretation of our existing and future extradition treaties in so far as narcotics offences are concerned, and would seriously impair, if not destroy, the effectiveness of our Extradition Conventions in narcotics cases.

We came here hoping that a long step forward might be taken by this Conference and that it might draw up a Convention which all could sign, one which would serve to strengthen the measures intended to prevent infringement of the provisions of the older drug Conventions.

It seems to us apparent that some of the nations do not as yet find themselves in a position to take steps along this path any more effective than those embodied in the Convention now presented for signature. We regret that those nations are not able to bind themselves to any greater extent than this Convention provides, but we are impelled to state that the United States cannot, on that account, undertake to discard its existing system, which has been tried and has proved effective, for a system which would impose upon the narcotics administration in the United States the limitations which are embodied in this Convention, limitations which, in our opinion, would constitute, in our case, a distinctly retrograde step and would bring about results directly contrary to the purpose of this Convention.

To sum up, the principal reasons why we find ourselves unable to sign the Convention are the following :

In the first place, we consider that application of the stipulations of the Convention by Governments which at present find themselves the principal victims of illicit narcotic traffic would weaken rather than strengthen the international measures available to-day to suppress the abuse of narcotic drugs.

In the second place, we consider that the stipulations of the Convention do not tend in any increasing measure effectively to prevent or adequately to punish the illicit traffic.

In the third place, we consider the stipulations of the Convention to be impracticable because they attempt, by means of a treaty, to dictate to legislative bodies the exact terms of legislation which those bodies should pass to meet obligations of this and of the other drug Conventions.

In the fourth place, we consider that the Convention fails to meet the situation in countries where extra-territoriality obtains, those being the countries where the drug situation is at present most acute.

In the fifth place, we regard the Convention as inadequate in so far as cannabis is concerned.

In the sixth place, we consider that it would be a retrograde step for the United States to discard its present system of prevention, prosecution and punishment as the ratification of this Convention would require it to do.

In the seventh place, ratification of this Convention would jeopardise the established and well-tryed system which the United States now maintains of extradition for narcotics offences.

We may say, however, that the American Government, while it cannot undertake to sign this Convention, will nevertheless continue to extend to all nations, in the campaign against the abuse of narcotic drugs, the fullest possible co-operation, as it has in the past. We believe that this can be done more effectively under our existing system than under the limitations which this Convention would impose upon us.

M. SOUBBOTITCH (Yugoslavia) announced that, as he had not been able to attend all the meetings of the Conference, he would only sign the Final Act. He thought his Government should have an opportunity of considering the complete text before deciding whether it would sign and ratify the Convention.

He pointed out, more particularly, that the fact of the Yugoslav Government signing, ratifying or acceding to the present Convention must not be interpreted as signifying its acceptance or ratification of the 1931 Limitation Convention.

The PRESIDENT declared the Convention open for signature.

*The plenipotentiaries of the following twenty-three States signed the Convention, Final Act and Protocol of Signature: Austria, Brazil, United Kingdom, Canada, China, Czechoslovakia, Cuba, Ecuador, Egypt, France, Greece, India, Japan, Mexico, Netherlands, Panama, Poland, Portugal, Roumania, Spain, Switzerland, Union of Soviet Socialist Republics and Uruguay.*

The PRESIDENT announced that the instruments would be signed in the afternoon by the delegates of Denmark and Venezuela.

The delegate of Afghanistan stated that he could not sign for the time being.

*The delegate of the following three States signed the Final Act only:*

Chile, Irish Free State and Yugoslavia.

*The delegates of the following two States declared that they had not received full powers to sign:*  
Hungary and Iraq.

*The following four States were not represented at the last meeting of the Conference:*  
Bulgaria, Honduras, Peru and Siam.

#### 40. Closing Speech of the President.

The PRESIDENT spoke as follows:

We have come to the end of our work and I think the Conference may be satisfied with the result. In adopting this Convention, it has inaugurated an effective system for repressing the illicit traffic in narcotic drugs in all its forms. May we hope that, after promptly ratifying the Convention, the signatory States will enact the necessary legislation to cope with this scourge of humanity which has already claimed so many victims.

If we have succeeded in adopting this Convention, it is due to the fact that your discussions have been held and your decisions taken in a cordial spirit of collaboration and conciliation. It is your President's duty to thank you sincerely for the spirit which has thus pervaded your proceedings and which has lightened his task. I thank you most cordially.

You will agree with me when I say that, as always, we owe much of our success to the way in which the Secretariat, with its customary expedition and precision, has helped us and seconded our efforts. On behalf of you all I pay a well-deserved tribute to M. Ekstrand and his staff.

May our work inaugurate a happier future for mankind.

M. DE REFFYE (France), Vice-President, expressed the general satisfaction which the nomination of so eminent a jurist as M. Limburg to preside over such a technical conference had given to all his colleagues. The spirit of conciliation to which the new Convention testified was due to the extreme impartiality and the great indulgence shown by the President. On behalf of all his colleagues, the Vice-President thanked the President and associated the Conference generally with the hope expressed that the Convention adopted would mark another step forward in human progress.

The PRESIDENT thanked M. de Reffye and the Conference for their appreciation, and declared the Conference closed.

ANNEX 1.

O.C.1481  
Geneva, May 9th, 1933.

REPORT OF THE SUB-COMMITTEE APPOINTED TO STUDY THE DRAFT CONVENTION SUBMITTED BY THE INTERNATIONAL CRIMINAL POLICE COMMISSION, AS PRESENTED TO THE ADVISORY COMMITTEE DURING ITS SIXTEENTH SESSION.

1. The Advisory Committee at its fourteenth session (1931), having discussed various questions connected with the draft International Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (document O.C.1369)<sup>1</sup> submitted by the International Criminal Police Commission, and having noted that certain questions raised in that draft Convention (crimes and punishments, extradition, administrative reorganisation concerning the establishment and working of central police offices) called for careful preliminary study, decided to refer the question to a sub-committee. This sub-committee was asked, not only to study the legal aspect of the draft Convention, but also to examine all questions to which it might give rise.

The most important question raised by the draft refers to the calling of a conference with a view to the conclusion of a convention for the suppression of the illicit traffic in dangerous drugs.

During the same year, the Conference for the Limitation of the Manufacture of Narcotic Drugs<sup>2</sup> expressed the wish that such a convention might be concluded with the least possible delay and requested the Council "to draw the attention of Government to the importance of such a Convention, in order to hasten the meeting of a Conference to conclude a convention on this question".

The Council, at its sixty-fourth session (September 4th, 1931),<sup>3</sup> noted the request and decided, before taking any action, to await the report of the Advisory Committee on the question.

2. *The present position with regard to the work of the Sub-Committee.*—On July 24th, 1931, the Sub-Committee communicated through the Secretariat to the members of the Advisory Committee and to the representatives of Canada and the United States of America on the sub-committee a memorandum on the draft Convention (document O.C.1392), and requested them to inform the Secretariat of their Governments' observations on the following three points:

(1) Is it possible to amend the national provisions of penal law—whether embodied in the general penal code or in other laws—in a way to make punishable all or any of the acts enumerated in the Convention?

(2) Can it be made possible to treat all or any of the offences in question as extradictable crimes?

(3) Do Governments approve the proposed police organisation and the proposed procedures on international collaboration?

In the opinion of the Sub-Committee, the replies of the Governments might serve as a basis for the preparation of a detailed questionnaire to be sent to all the Governments.

The Secretariat has received replies containing the observations of the following Governments: Austria, Belgium, the United Kingdom, Canada, France, Germany, India, Netherlands, Switzerland, the United States of America. These replies, with the exception of those of Portugal and Siam, which arrived after the last session of the Advisory Committee, were examined by the Sub-Committee during the last session of that Committee.

The Sub-Committee decided to meet before the sixteenth session and to continue the examination of the question; it considered the possibility of securing the assistance of legal experts in international and criminal law.

It will continue the discussion on the importance of a study of the various national laws, with a view to establishing (1) what offences in connection with narcotic drugs are at present punishable in the various countries, (2) what analogies and what differences exist between those offences. Such a study is indispensable in order to ascertain (3) the possibility of the international unification, by means of a general convention, of punishable acts in connection with narcotic drugs—that is

<sup>1</sup> See the Report of the Advisory Committee to the Council on the Work of its Fourteenth Session, document C.168(a).M.62(a).1931.XI, Annex 6.

<sup>2</sup> Final Act, Recommendation V. This recommendation is also contained in the report of the Fifth Committee of the Assembly on penal and penitentiary questions, adopted by the Assembly on September 23rd, 1931 (document A.70.1931.IV, page 2).

<sup>3</sup> See *Official Journal*, November 1931, page 2013.



to say, offences for which States would be prepared to adopt the principle of universality of suppression.

A preliminary study would necessitate exact information, which the Governments would be asked to supply, with regard to Question 1 above, and perhaps even the preparation of a questionnaire on the present position with reference to national laws on the subject. The replies would form the basis for an examination of questions 2 and 3 above, the results of which would, on the basis of the draft Convention submitted by the International Criminal Police Commission, enable the preliminary draft provided for in the procedure laid down by the Assembly to be prepared (see *Official Journal*, Special Supplement No. 92, of October 1931, page 11).

3. *What preparatory procedure should be followed in the case of all general conventions to be negotiated under the auspices of the League of Nations?*—The 1930 and 1931 Assemblies decided that :

" (a) Where an organ of the League of Nations recommends the conclusion of a general convention on any matter, it shall prepare a memorandum explaining the objects which it is desired to achieve by the conclusion of the convention and the benefits which result therefrom. Such memorandum shall be submitted to the Council of the League of Nations.

" (b) If the Council approves the proposal in principle, a first draft Convention shall be prepared and communicated, together with the explanatory memorandum, to the Governments, with the request that, if they feel that the draft should be taken into consideration, they shall inform the Secretary-General of their views, both with regard to the main objects or the suggested means of attaining them, and also with regard to the draft convention. In some cases, it may be desirable to annex a specific questionnaire."

In accordance with this procedure, the first decision to be taken by the Sub-Committee and then by the Advisory Committee concerns the formal *recommendation* with regard to the conclusion of a convention for the suppression of the illicit traffic in dangerous drugs. If the decision is in the affirmative, a report explaining the *objects* and the *advantages* of such convention should be prepared and submitted to the Council.

The *recommendation* provided for in the above-mentioned procedure might be drafted on the basis of the Advisory Committee's discussion at its previous sessions, as contained in the Minutes and reports of the Council, unless a previous consultation of experts is regarded as desirable.

The *aims* of the Convention as provided for in the draft submitted by the International Criminal Police Commission may be summarised under the following four heads :

(a) Unification of punishable acts in the various national laws on narcotic drugs;

(b) Provisions for facilitating extradition by stipulating that the punishable acts enumerated in the Convention are to be treated as cases for extradition as between the contracting parties;

(c) Establishment of national central police offices for centralising police investigations in connection with narcotic drugs in the various countries and direct international collaboration between the different national central offices;

(d) Establishment of the procedure to be followed for the transmission and execution of letters of request.

Among the *advantages* of the conclusion of such a convention may be mentioned the following :

Illicit traffic in narcotic drugs is of an eminently international character. The traffickers engage in organised activities which extend to the territory of other States. Experience has shown that even the severest penalties are not adequate to suppress international illicit traffic, as proceedings taken against the offenders often meet with insurmountable obstacles in connection with extradition and procedure.<sup>1</sup> The manifest disproportion between the ease with which an offence connected with illicit traffic may be prepared, organised and committed and the difficulty—not to say impossibility—of taking proceedings against and punishing the traffickers, leads to

<sup>1</sup> As an illustration may be mentioned the Muller-Rauch trial at Basle, at which it was impossible to prosecute five offenders, as the laws of the countries where they resided did not recognise extradition for offences connected with narcotic drugs.

The Advisory Committee pointed out, in its Report to the Council on the Work of its Fifteenth Session, that "it was necessary to make arrangements between various countries for the extradition of persons who had violated the narcotic drugs legislation" and that "still closer police co-operation on an international basis would be advantageous". It adopted the following recommendations on the question :

" 3. The Committee has again to report to the Council that, in some of the most important cases of the illicit traffic, it has not been possible to bring to justice persons who have taken part in the transactions as principals or agents, for the reason that the law has not made it an offence to engage in such transactions when carried out in another country, and it regards it as an essential measure for the suppression of the illicit traffic that every country should make it an offence for a person within its jurisdiction to procure, or take part as an intermediary or otherwise in procuring dangerous drugs to be supplied in any other country, unless authorised so to do by the Government

" The Committee would also urge the importance of establishing in each country a central official organisation charged with the task of watching the application of laws and regulations promulgated in pursuance of the Conventions and of communicating directly to the central police organisations in other countries all information regarding the illicit traffic."

the conclusion that the growing internationalisation of criminal activities in that field must be met by internationalisation of the means of suppression.

This internationalisation might be attained by the conclusion of an international Convention providing for :

(a) The unification, in the various national laws, of certain punishable acts relating to the illicit traffic in narcotic drugs; the advantages of such unification are obvious : it would facilitate extradition—in fact would render it possible—in cases where, for instance, as experience has shown, the principle that the rules of law must be identical has in practice led to impunity;

(b) Direct international collaboration between the different central police offices, the establishment of which would be provided for in the Convention; this direct collaboration would make it possible to discover and take proceedings against drug traffickers with all necessary rapidity and efficacy.

The conclusion of such a Convention would enable the logical conclusion to be drawn from the distinction made in the three international Opium Conventions (1912, 1925 and 1931) between licit and illicit traffic in narcotic drugs. The three Conventions (1) *established* an international regime for the operation of licit traffic (manufacture and trade) in narcotic drugs, and (2) *stated* that any other traffic is illicit traffic.

Their object was not to establish an international regime to secure the effective suppression of illicit traffic; that aim can be achieved only by means of a special international agreement, which, as experience has shown, is necessary if the proper value is to be given to the above-mentioned distinction between licit and illicit traffic.<sup>1</sup>

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## ANNEX 2.

*Series of Publications : 1935.XI.10*

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Geneva, October 23rd, 1935.*

### TEXT OF THE DRAFT CONVENTION, TOGETHER WITH OBSERVATIONS OF GOVERNMENTS ON THE FIRST AND SECOND CONSULTATIONS (REPLIES TO CIRCULAR LETTERS 159.1933.XI AND 120.1934.XI).

#### NOTE BY THE SECRETARY-GENERAL.

This document has been prepared for the convenience of the Committee of Experts entrusted by the Council with the revision of the draft Convention, and incorporates under the preamble and each article observations made by Governments as a result of the first and second consultations.

The Committee of Experts meets in Geneva on December 9th, 1935.

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#### *Explanatory Notes.*

(1) Under the heading, "Draft for First Consultation", are given observations of Governments on the text of each article as drafted for the first consultation. Under the heading, "Draft for Second Consultation", are given observations of Governments on the text of each article as drafted for the second consultation.

(2) The page references given under the heading "Draft for First Consultation" are to the Annex to Circular Letter 120.1934.XI (O.C. 1558 (1)), the document which contains the Government replies on the first consultation in full.

The page references given under the heading "Draft for Second Consultation" are to document C.199.M.109.1935.XI, the document which contains the Government replies on the second

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<sup>1</sup> It should be mentioned here that the 1912 and 1925 Conventions and the Final Act of the 1931 Conference contain certain recommendations and stipulations of a general nature relating to the suppression of illicit traffic.

*Article 20 of the 1912 Convention* recommends that the contracting parties shall examine the possibility of enacting laws or regulations making it a criminal offence to be in illegal possession of certain narcotic drugs. *Article 28 of the 1925 Convention* lays down the obligation to adopt penal legislation dealing with breaches of the laws on narcotic drugs; while *Article 29 of the same Convention* contains a recommendation relating to an offence of a particular nature—namely, the offence of procuring or assisting the commission of an offence in another country. The 1931 Convention contains no obligation of a penal nature, while the *Final Act of the 1931 Conference* comprises the recommendation mentioned above (Recommendation No. 5) implying that the existing penalties are not in all countries adequate for the satisfactory suppression of illicit traffic.

consultation in full. This document, however, does not contain the replies of Brazil, Danzig, Egypt, the United States of America, Roumania and Uruguay, which came to hand after the document was issued, but which have been incorporated in document C.199(a).M.109(a).1935.XI.

\* \* \*

## PREAMBLE.

### DRAFT FOR FIRST CONSULTATION.

*The High Contracting Parties having resolved, on the one hand, to strengthen the measures intended to prevent infringement of the provisions of the International Opium Convention signed at The Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs signed at Geneva on July 13th, 1931, and, on the other hand, to prevent and punish by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above Conventions, the undersigned plenipotentiaries, holding full powers found in good and due form, have agreed on the following provisions :*

United States of America (April 13th, 1934), page 6.

"In the opinion of this Government, the provisions of existing treaties for the suppression of illicit activities connected with the traffic in narcotic drugs, if given proper effect by all the interested Governments, are adequate to accomplish the purpose of the treaties, and this Government would not, therefore, feel disposed to participate in the proposed Convention."

Czechoslovakia (May 24th, 1934), page 20.

"From a general standpoint, the Czechoslovak Government considers that it would be desirable to simplify as far as possible the system of international agreements bearing on the same subject, even if they envisage that subject from different points of view. Simplification would doubtless make for greater clearness and more effective application. Similarly, the international organs responsible for the application, or supervision of the application, of the Convention, should not be too numerous. The Czechoslovak Government therefore feels that it would be desirable to consider closely the probable relationship of the projected Convention to the other Opium Conventions of January 23rd, 1912, February 19th, 1925, and July 13th, 1931. It would, above all, be desirable to consider whether the projected Convention should not embody a consolidated text of all the regulations in connection with the illicit traffic in opium and dangerous drugs. This would avoid all possible dispute as to whether any particular clause has been superseded or amended, or remains unaffected by the new Convention."

Union of Soviet Socialist Republics (January 19th, 1934), pages 18 and 19.

This Government communicated the fact that its competent organs had intimated that it would be desirable to strengthen certain articles of the Convention, at the same time redrafting some in order to enable States not parties to the 1912, 1925 and 1931 Conventions to sign such a convention.

The proposal for a draft Preamble was the following :

#### 1. Draft Preamble.

"The High Contracting Parties having resolved to combat the illicit traffic in habit-forming drugs and substances by the most effective methods, the undersigned plenipotentiaries, holding full powers found in good and due form, have agreed on the following provision : "

The same communication added the following note :

"*Note.*—The above text, by making the Convention universal, would enable countries not parties to the 1912, 1925 and 1931 Conventions to participate."

### DRAFT FOR SECOND CONSULTATION.

*(Preamble unchanged.)*

Spain (February 25th, 1935), pages 5 and 6.

"It would seem, in fact, that what is required is to make it impossible for the trafficker, in the widest sense of the word, to escape the penalties laid down in the different penal legislations. It is this factor of cause and effect which would seem to be most important. Starting from this idea, therefore, and from our internal legislation, we shall consider, in examining each article, whether the aim in view can actually be achieved. *A priori*, the reply must be in the negative, at any rate in so far as concerns the idea of complete suppression postulated in the preamble in question, which would seem to pursue a more comprehensive aim than the articles dealt with below."

United States of America (May 13th, 1935).

This communication pointed out in reiteration of the views expressed in previous communications that it would not be practicable to give effect in the United States to the provisions of the draft Convention, which would require prosecution in one country for offences committed in another country. It also repeated the opinion of the Government that the provisions of existing treaties were adequate to accomplish the purpose of those treaties and, for the reasons stated, the Government of the United States could not participate in the proposed Convention.

Czechoslovakia (January 24th, 1935), page 17.

This communication contained a number of observations on certain articles of the Convention and pointed out that these were complementary to the previous criticisms and suggestions offered in the first observations of the Czechoslovak authorities and which they still maintained (see above under first draft of preamble).

## ARTICLE 1.

### DRAFT FOR FIRST CONSULTATION.

*Each of the High Contracting Parties undertakes to adopt the necessary legal measures for severely punishing, particularly by a sentence of imprisonment, the manufacture, conversion, extraction, preparation, possession, offering for sale, distribution, brokerage, purchase, sale, importation or exportation of the drugs and substances covered by the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931, in intentional violation of the laws intended to ensure the execution of the said Conventions.*

*The above offences shall be punishable even when the various acts forming the elements which constitute the said offences have been committed in different countries.*

*The said legal provisions must make it possible to punish attempts which have reached the stage of a commencement of execution and also any preparatory acts.*

Austria (May 17th, 1934), page 7.

The following observations :

"The Federal Government realises that, in order to combat the traffic in narcotics as effectively as may be desirable, it will be necessary to strengthen the penalties now in force in Austria. The authorities concerned have accordingly prepared a law supplementing the law on poisons of 1928. This supplementary law, which qualifies as crimes certain acts constituting an abuse of narcotics, will be duly submitted to the legislative bodies. The Federal Government is bound to point out, however, that it would not be in a position to inflict judicial penalties in respect of all the acts mentioned in Article 1 of the draft Convention, but administrative penalties might be provided for acts to which judicial penalties are not applicable. It may be noted, further, that, apart from judicial and administrative penalties, the present Austrian law already provides for prosecution for fiscal offences in cases of infringement of the Customs laws and regulations.

"It would, in our opinion, be well to divide the acts enumerated in Article 1 into two categories, making a distinction between serious and less serious offences. The provisions of Articles 2, 3, 4 and 5 would be applicable only to the first category."

Canada (November 7th, 1933 and April 19th, 1934), page 8.

In the later letter, the Canadian Government made the following general observations :

"(a) In order of relative importance, the following points should be embodied in any Convention arrived at :

"(1) Provision to be made by each country for legislation imposing adequate punishment, including imprisonment, for narcotic offences, such offences to include conspiracy in relation to narcotic matters, and acts committed within each country's jurisdiction directed against the narcotic laws of other countries;

"(2) Extradition between countries in connection with all such offences.

"(b) In view of the very great importance attached to these two points, which are looked upon as fundamental in relation to any attempt made to secure universal international co-operation in connection with narcotic trafficking, any other points concerning which unanimity cannot be readily achieved, such as that involved in Article 4, should not be included."

The earlier letter contained the following :

"As regards Article 1 of the draft Convention, it is considered highly desirable that international agreement should be reached regarding the provision of adequate punishment, including imprisonment, for offences against narcotics legislation. The question of obtaining a reasonable degree of uniformity in the laws of all countries on this matter is considered to be

of relatively greater importance than the question of extradition, important though the latter may be. Canadian legislation on this matter, which provides for sentences of imprisonment up to seven years, fines not exceeding \$1,000, and the lash, is at least equal to that of any other country and superior to that of most other countries."

It also contained the following :

"The Government of Canada is strongly in favour of provision being made by each country for legislation imposing punishment, including imprisonment, for narcotic offences, as contemplated in Article 1 of the draft Convention."

The following detailed proposal was made in the later letter as to Article 1 :

"Provision should be made for the inclusion of the following :

"(a) Conspiracy in relation to any other of the offences mentioned;

"(b) Acts committed within the jurisdiction of one contracting party directed against the narcotic laws of any other contracting party;

"(c) In the case of one who is not a common carrier, taking or carrying, or causing to be taken or carried, from any place to another place, any narcotic drug. This provision is already contained in Canadian legislation, and has been found useful."

Colombia (February 9th, 1934), page 11.

"The penalty of imprisonment proposed is already provided for in Articles 5 and 10 of Law No. 118 of 1928 in the case of persons carrying on illicit traffic and infringing the prohibition against the manufacture of the drugs in question in the country.

"From the standpoint of equity in the scale of punishment and of the prompt enforcement of penalties, it is right that an offence should be punishable, even if the various acts constituting it were committed in different countries; nevertheless, we should, for this purpose, distinguish between these acts, since, in accordance with the above-mentioned provisions, we include them all in the conceptions of *illicit traffic and preparation or conversion*."

United States of America (April 13th, 1934), pages 6 and 7.

This communication observes that the acts proposed to be made offences by the draft Convention are already prohibited and punishable under the law of the United States.

It adds that the practically insuperable difficulties which would be encountered in attempting to prosecute American citizens for the unauthorised procurement and supply of narcotic drugs outside the United States, impels the conclusion that it would not be feasible to provide for the prosecution of such cases in the United States.

With respect to attempts to commit the offences contemplated by the draft Convention, it points out that the Government of the United States has not considered it necessary or desirable to punish attempts as such, unless attempts grow out of a conspiracy to violate the law.

France (May 12th, 1934), page 13.

The French Government made the following observations with reference to the third paragraph of Article 1 :

"If, on the one hand, in the majority of the legislations, there is no objection to extending the punishment to 'attempts' at illicit traffic, it seems on the other hand difficult for many legislations to punish 'preparatory acts', and thus to adopt in a special field a derogation of the general principles of the law which in regard to the application of the penal law requires a commencement of execution.

"In these circumstances, it would appear easier to obtain general agreement if, in this first article, the words 'any preparatory acts' were replaced by 'any preparatory acts in so far as the law allows'. This is also the formula which, for the same reasons, has been adopted in Article 3 of the 1921 Convention for the Suppression of the Traffic in Women."

Italy (November 10th, 1933), page 14.

"The Royal Government is convinced of the necessity for laying down adequate and sufficiently severe penalties for offences in connection with narcotic drugs and desires to express its entire approval of the main principles underlying the draft Convention communicated to it. The Royal Government has, in fact, always acted upon these principles in all international conferences on the traffic in opium. They are in harmony with the principles underlying the new Italian Penal Code, and have already been embodied in the new legislation recently submitted to the competent department for examination."

The communication added that the Royal Government would prefer that Articles 1 and 2 should specify the minimum term of imprisonment to be introduced into the legislation of the States acceding to the Convention, at any rate, in the case of the more important offences—*i.e.*, those indicated in the said articles.

Poland (November 13th, 1933), page 15.

The communication suggested the following amendments :

" (1) Ad *Article 1, Paragraph 1*.—The words ' particularly by a sentence of imprisonment ' should be deleted, as the expression ' severely punishing ' is sufficient and implies imprisonment.

" (2) Ad *Article 1, Paragraph 3*.—Delete the words ' which have reached the stage of a commencement of execution ', and leave it to the legislation of the signatory States to define ' attempts ' in accordance with the laws in force. Article 23 of the Polish Penal Code, for instance, gives a much broader definition of the notion."

Sudan (November 1st, 1933), page 16.

" With regard to the concluding sentence of this article, acts which can be described as ' a stage of a commencement of execution ' would be punishable in this country as attempts, but ' preparatory acts ' are such that, whether or not they amount to an offence (*i.e.*, an attempt) depends entirely on the circumstances of each particular case, and it is undesirable that any change should be made in the general rules of our domestic criminal law on these points."

Sweden (December 14th, 1933), page 17.

The communication pointed out that certain clauses would make it necessary for that Government to introduce considerable changes in the laws in force before Sweden could accept a convention embodying the provisions in those clauses and expressed the hope that it would be found possible to modify them in accordance with the suggestions in the communication.

As to Article 1, the following suggestion was made :

" The provision of paragraph 1 might perhaps be taken to mean that the punishment for the offence named shall never be less than imprisonment. Such an interpretation does not seem to concur with the authors' intentions, nor would it be desirable. The provision should therefore be so worded as to make it quite clear that in less serious cases of the kind here under consideration the punishment inflicted might merely amount to a fine.

" The provisions of the second paragraph of Article 1 refer to a subject regarding which the criminal law of many countries lays down general rules. It can hardly be expected that countries like Sweden, whose criminal law is based on principles differing appreciably from the provisions of the draft, should consent to introduce special rules for this one domain of law. This paragraph should therefore be omitted in order to facilitate the accession of a large number of States."

Switzerland (April 27th, 1934), page 18.

The communication proposed the following addition to the draft of Article 1 :

" (1) ' Intentional participation ' should be mentioned in Article 1, particularly as provision is also made for the punishment of attempts.

" (2) In the same article, it might be desirable to insert, after the words ' preparatory acts ', the limitative phrase ' in so far as the law allows '."

It added the following observations :

" The 1933 International Convention for the Suppression of the Traffic in Women of Full Age contains this form of words in the second paragraph of Article 1. Again, Federal and Cantonal criminal law draws a distinction, as regards the various forms of offences, between the punishable forms of the perpetrated offence and attempts and preparatory acts, which are not punishable. Some preparatory acts, as in the case of counterfeiting currency, may be punishable. To be so, however, these acts must be specifically declared to be punishable by law. It would therefore seem desirable to qualify the term ' preparatory acts ' by adding the words ' in so far as the law allows '."

Czechoslovakia (May 24th, 1934), pages 20 and 21.

The communication took note of the fact that " contracting parties are allowed a certain degree of latitude in their legislation with regard to punishment, provided the acts referred to in Article 1 are ' severely punished ', particularly ' by a sentence of imprisonment '. From the subsequent provisions of the draft Convention, particularly that concerning extradition and the co-operation of Ministries of Justice in applying the procedure laid down in the draft, it would

appear that the aim of the draft is to secure that the contracting parties shall declare the offences mentioned in the first article to be delicts punishable by the judiciary. The question therefore arises whether this intention could not be more definitely and clearly expressed in an amended text.

"The draft Convention defines the various forms of punishable activity, but refers back to the 1912, 1925 and 1931 Conventions for the definition of their object. In this connection, the Czechoslovak Government repeats its suggestion that it might be desirable to consolidate all the regulations on this subject in a single convention.

"The list of punishable acts given in Article 1, paragraph 1, is deemed by the Czechoslovak Government to be adequate, because it can be broadly interpreted and applied even to cases that are not specifically mentioned. The Czechoslovak Government is of opinion that account should be taken even of the degree of noxiousness of the offence—i.e., the quantity of harmful drugs, their noxious effect on health and the casual, regular or even professional nature of the offence. It would certainly not be just to inflict rigorous or long imprisonment on a person who had, without official permission or a doctor's prescription, obtained very small quantities of dangerous drugs for such purposes as scientific experiment or his own treatment without endangering the health and well-being of others.

"The object of paragraph 2 of Article 1 seems to be to declare the various activities specified in paragraph 1 to be punishable offences even if they have been committed in different countries. It would be preferable to express this intention quite definitely.

"The Czechoslovak Government thinks that it would be very difficult, in the case of the offences specified in paragraph 1 of Article 1 of the draft Convention, to secure the punishment of mere preparatory acts if those acts do not in themselves constitute some part of an attempt to commit a punishable act. The present wording would seem to go too far, because not only the act of setting up a laboratory or leasing a shop or warehouse, but also the act of sowing plants which might be used for the manufacture of opium and other dangerous drugs, might have to be treated as a punishable offence. On the other hand, if effective proceedings have to be taken against persons engaging in the illicit traffic in opium and dangerous drugs or deriving profit from that traffic, even if they do not take any personal part in the pursuit of these criminal activities (as seems to be the intention of the Advisory Committee as expressed in its report) the Czechoslovak Government thinks that there should be added to the draft Convention a clause to the effect that all complicity should be punishable in the same degree—i.e., not only the principal author of the delict should be punished, but also any person who has made preparations for the punishable offences referred to in Article 1, by order, advice, instruction or approval, or any person who has intentionally instigated such conduct or has assisted the commission of the offence by having intentionally procured the wherewithal, or removed difficulties or in any other way aided the commission of the offence, or any person who, even before the commission of the punishable offence, has agreed with the principal as to the assistance to be afforded him after the commission of the offence, or as to the sharing of the profits or even any person who, not having previously reached an agreement with the principal, nevertheless aids and succours him after the commission of the punishable offence or derives gain or profit from the offence which has since come to his knowledge.

"Extenuating circumstances of a personal nature which make the principal or any one of his accomplices or associates exempt from punishment, should not apply to the other accomplices or associates."

Union of Soviet Socialist Republics (January 19th, 1934), page 19.

This communication proposes a new text for Article 1, paragraph 1, and adds the note appearing below.

"Each of the High Contracting Parties undertakes to adopt the necessary legal measures for severely punishing—particularly by a sentence of imprisonment together with the confiscation of all sums of money, apparatus and other property employed in the illicit traffic to be punished under the present Convention—the manufacture, conversion, extraction, preparation, possession, offering for sale, distribution, brokerage, purchase, sale, importation or exportation of the drugs and substances enumerated in the list annexed to the present Convention in intentional violation of the above-mentioned provisions. The list in question may be supplemented by agreements between the High Contracting Parties entered into through the diplomatic channel.

"Note.—Imprisonment without confiscation of property would appear to be ineffective in cases where clandestine companies engaged in illicit traffic are implicated."

#### DRAFT FOR SECOND CONSULTATION.

*Each of the High Contracting Parties agrees to make legislative provision for severely punishing, and, in particular, punishing by imprisonment, the illicit manufacture, conversion, extraction, preparation, possession, offering for sale, distribution, purchase, sale, brokering, despatch, transport, importation and exportation of the drugs and substances covered by the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931, provided the offences is wilfully committed.*

*Each of the above offences shall, if they are committed in different countries, be considered as a distinct offence; and likewise, any preparatory act shall be regarded as a distinct offence if it was*



*preparatory to the commission in another country of one of the above offences and has reached the stage of a commencement of execution.*

*The above-mentioned legislative provisions shall make punishable each of the above offences and also shall make punishable attempts and preparatory acts if, in either case, they have reached the stage of a commencement of execution.*

*Comment.*

The first paragraph of the article enumerates the acts that are to be punished, and "despatch" and "transport" have been included. The second paragraph provides that each of those acts, if committed in different countries, is to be regarded as a separate offence, and that preparatory acts shall also be regarded as distinct offences if they have reached the stage of a commencement of execution. The third paragraph provides (as in the original text) that such preparatory acts shall be punishable, and also that attempts shall similarly be punishable.

Certain members attach great importance to the phrase: "If it . . . has reached the stage of a commencement of execution of that act". It seemed to them impossible that a person should be prosecuted and punished for the mere intention of committing an offence when such intention has not been translated into action.

Austria (February 4th, 1935), page 3.

This communication drew attention to the point mentioned in the previous letter, of May 17th, 1934 (see above under first draft)—namely, that the present Austrian law already provides for prosecution for fiscal offences in cases of infringement of the Customs laws and regulations. It also stated that the Federal Government would be unable to sign a Convention without an appropriate reservation unless account was taken in the Convention of this point and another mentioned in the letter. (For second point, see below under second draft of Article 5.)

United Kingdom (April 29th, 1935), page 3.

The following observation was made :

"The words 'in either case' in line 12 should be omitted. These words apply only to 'preparatory acts' and not to 'attempts', which in English law and no doubt in that of other countries have well-defined meanings. The words 'if they have reached the stage of commencement of execution' are necessary in amplification of 'preparatory acts' but not of 'attempts', which have a definite legal significance."

Canada (September 12th, 1934), page 4.

This communication expressed satisfaction with the new draft as a basis for eventual discussion and continued :

"Canada, however, still adheres to the opinion that the inclusion of the offence of 'conspiracy' in Article 1, and subsequent extradition in connection therewith under Article 5, would constitute a more effective weapon in the hands of narcotic control officers in the practical application of their efforts to cope with the high international narcotic trafficker than is obtainable by means of Article 1 as at present constituted."

Egypt (July 13th, 1935).

This communication began by a reference to the purpose of the Convention, which is "to ensure the suppression of the illicit traffic in dangerous drugs, not only by standard definitions of punishable acts, but also by deservedly severe penalties".

The communication, however, went on to point out :

"But as there are fourteen consular courts in Egyptian territory, and as they do not always apply the general principles in force in the capital, varied and often ineffective penalties may be imposed in Egypt for the offences mentioned in the Convention, according to the competent court."

"The Egyptian Government feels that the Convention cannot allow diverse and inadequate penalties to be imposed in the territory of one contracting State (and that a State in which the campaign against narcotic drugs is of the highest importance), when it is endeavouring to do away with such a state of affairs in all countries signatories to the Convention."

"Following the example set in the Convention for the Supervision of the International Trade in Arms, an article should be added to the proposed Convention, under which 'the High Contracting Parties who possess extra-territorial jurisdiction in the territory of another State party to the present Convention undertake in cases where the rules of this Convention cannot be enforced by the local courts as regards their nationals in such territory to impose on the latter the penalties laid down in their national legislation for any acts contrary to the provisions of the present Convention.'"

"It is essential to Egypt that these words should appear in the Convention, for this change would enable offenders who are nationals of the Capitulation Powers to be dealt with in Egyptian territory on the same footing as nationals of the country and foreigners amenable to the national courts."

"The list in Article 1 is more comprehensive than the terms of Egyptian narcotic drug legislation, which does not cover the manufacture, conversion, extraction or preparation of dangerous drugs. As Egypt does not produce these drugs, it was not thought necessary to make those acts offences under the law, but the Egyptian Government is prepared to accept the most comprehensive list of drug offences and to amend its legislation accordingly.

"With regard to penalties, the Egyptian Government is not in favour of dividing the offences mentioned in Article 1 into serious and less serious offences, the latter punishable only by a fine or by administrative penalties. It is difficult without weakening the repressive measures and without causing undesirable divergencies and inequalities between various bodies of national law, to make such distinctions in the Convention or to leave it to the national legislations to make them, especially as there are no administrative penalties in some countries.

"Apart from the possession of narcotic drugs by a private individual for his personal use, which does not come within the scope of the Convention and should accordingly be omitted from Article 1, all the acts enumerated in this article, including possession, are undoubtedly serious acts calling for severe penalties, because they can only be committed with a view to traffic in dangerous drugs. The Egyptian Government is therefore of opinion that it would be preferable to do away with fines and to make imprisonment compulsory for all the offences mentioned in this article.

"The Egyptian Government approves the Italian proposal<sup>1</sup> that Articles 1 and 2 should specify the minimum term of imprisonment to be introduced into the legislation of States acceding to the Convention for the offences indicated in the said articles.

"On the contrary, it is unable to support the proposal of the Union of Soviet Socialist Republics with regard to the introduction of a clause<sup>1</sup> providing for the confiscation of property, as this is incompatible with the fundamental principles of most modern Constitutions. Furthermore, while it could accept Canada's proposal to make conspiracy in narcotic drug cases a punishable offence (the new Article 47 *bis* of the Egyptian Penal Code on voluntary agreements is in accordance with this proposal), it could not support the proposal that acts committed on the territory of one of the contracting parties directed against the narcotic laws of any other contracting party should be punishable. The latter proposal would be unnecessary if, as a result of the Convention, narcotic drug offences were made the same everywhere, if conspiracy were made punishable, and if preparatory acts were regarded as separate offences (further reference will be made to this later on), and, lastly, because possession is in itself an offence under the Convention.<sup>1</sup>

"The original text of Article 1, paragraph 2, stated that 'the above offences shall be punishable even when the various acts forming the elements which constitute the said offences have been committed in different countries'.

"As revised, paragraph 2 of Article 1 would not seem to have achieved its purpose of making the original paragraph clearer. It contains an ambiguity which was not present in the first draft. Does this measure relate to the combination of offences or penalties, which would be ruled out by the very fact that there is only one offence committed in several countries, or does it apply to subsequent offences even though the acts, if punished, would in any event be taken into account as introducing the aggravating circumstance of previous convictions in bodies of law which provide for the international recognition of previous convictions?

"The conception 'preparatory act' is also inconsistent with the condition that this act must constitute a commencement of execution. In these circumstances, it is no longer a preparatory act but an attempt.

"Furthermore, if the preparatory act mentioned in paragraph 2 must constitute a commencement of execution either in the country in which it was committed or in another country, this provision is not necessary in the first case, in view of paragraph 3, under which attempts are punishable, whereas in the second case we do not see how it is possible to impose penalties for a preparatory act which is not a commencement of execution in the country where it was committed, and which is not regarded as a separate offence.

"These provisions, however, are unsatisfactory in any event, owing to the vagueness of the expression 'preparatory act'. In the Convention for the Suppression of Counterfeiting Currency, which nevertheless deals with an offence involving more serious and more precise preparatory acts, this very obscure conception was avoided. It should also be avoided in the Convention on Narcotic Drugs.

"In this matter, as in crimes against the safety of the State, preparatory acts such as the possession of bombs or material serving for the commission of the offence constitute offences *sui generis*, and are punishable as separate offences. There is therefore no reason why the Convention should not treat acts preparatory to the offences mentioned in paragraph 1 as separate offences. To regard possession in itself as a punishable offence, possession in most cases being only preparatory to another offence, is surely a way of treating the preparatory act as a separate offence. If this suggestion were adopted, it would be necessary to punish attempts at preparatory acts regarded as separate offences.

"Lastly, it is pointed out that conspiracy on Egyptian territory in connection with an offence committed abroad is not punishable under Egyptian legislation, as it does not disturb Egyptian public order. The Convention might, in the interest of international solidarity, provide for the punishment of acts of conspiracy coming within the above category. In this event, Egyptian legislation would conform to that rule.

<sup>1</sup> See above, under Article 1, first consultation.

"The Egyptian Government therefore proposes the following wording for paragraphs 2 and 3:

" 'The above acts shall be punishable even when the various offences forming the elements which constitute the said acts have been committed in different countries.

" 'The above-mentioned legislative provisions shall make punishable each of the above acts and also attempts.' "

Spain (February 25th, 1935), pages 6 to 8.

"In the first place, the amendments to this article compared with the same article in the preliminary draft do not seem, in spite of the inclusion of the words 'despatch' and 'transport', to make it certain that persons who arrange for and finance the despatch of illicit drugs shall not escape the penalties. It is obvious that the *despatch* and *transport* of illicit drugs are distinct from, and sometimes even of far less importance than, the other acts enumerated. At first sight, it would seem that *arranging for*, *preparing for* or *financing* the despatch of illicit drugs are not in their proper place in this article, but should rather be included among the preparatory acts referred to in the second paragraph of the same article. There is, however, one objection to this—namely, that, according to paragraph 2, preparatory acts in addition to constituting a commencement of execution—and that is not quite accurate—relate to manufacture, conversion, extraction, preparation, possession, offering for sale, etc. In none of these cases, however, is there either in so far as concerns real preparatory acts or according to the text, any commencement of the execution of what constitutes the *essence* of the different categories of offences (manufacture, conversion, extraction, etc.).

"In our opinion, acts consisting in *arranging for*, *preparing for* and *financing* the despatch of illicit drugs are completely covered by the concept *trafficking*, traffic, in the same way and with as much reason, for example, as manufacture and possession. With regard to *illicit traffic* in dangerous drugs, the draft does not keep to the strict meaning of the word 'traffic', but, by divesting it of its material or formal content (to make, to go or to come to convert), interprets it to mean the whole series of transactions which can be classified as illicit *trade* in drugs. It might therefore be better, instead of naming a list of the acts, which, as we have seen, could never, notwithstanding the best intentions, be complete, to speak of illicit traffic—an expression preferable to *trade*—and to leave it to the courts of each country to decide in specific cases whether the act is or is not an act of illicit traffic. This would, in fact, be in strict correlation with Article 12.

"The first paragraph of Article 1 as drafted excludes the possibility of a gift or, indeed, of a loan of dangerous drugs, a case which might very well occur.

"The same paragraph mentions the desirability of punishing the acts in question by imprisonment. That might lead to considerable inequality in view of the difference in degree of that penalty in the different States.

"In Spain, imprisonment may be imposed for from six months and a day to six years. In Italy, the sentence imposed is not imprisonment but penal servitude up to a maximum of twenty-four years. Here, the difficulties and consequently the inequality are even more obvious. In France also, there is no imprisonment in the strict sense, but penal servitude for from five to ten years. In Germany, imprisonment varies from one day to five years. There is no need to mention other codes to prove that the term of imprisonment varies in each country and if, in short, the legislation of each country is to be competent in each specific case, it is better to leave States to fix the term of imprisonment in accordance with the penal system of the country, without fixing the penalty in advance. Otherwise, the different national penal systems would have to be amended, and that is not admissible, however great the importance attached to a convention.

"If by 'prison' is meant only deprivation of liberty—though this does not seem to be brought out by the text—the difficulties entailed by fixing an international penalty in advance would be avoided to a great extent. In addition to leaving matters to the unrestricted operation of the national law in each country, without changing that law in any way, it might also permit of greater equality in the term of imprisonment. Lastly, it should not be forgotten that there is now a tendency to do away with the former limited and narrow classification of sentences, and to bring it into line with the conception of properly graduated periods of deprivation of liberty. The modern practice is to start from wider limits, and the old terminology, which always brings to mind a state of affairs that should be forgotten, or at any rate left behind, is being more and more abandoned.

"From the point of view of our penal legislation, attention may also be drawn to another point in this first paragraph. It was stated in Article 1 of the preliminary draft that, in order to be punishable, offences must be *intentional*. This would appear to require fraud. If we leave on one side for the moment, as this is not the place to discuss it, the point whether the use of the word 'intentional' implies a particular conception of fraud, which does not appear to have been the drafters' intention, the word in question was at all events designed to exclude culpable conduct. This much is obvious.

"In the present draft, the word 'intentional' has been replaced by 'wilfully' and doubts may thus arise, since fraudulent conduct is actually just as wilful as culpable conduct, although that does not apply to the consequences in both cases. Since, in our opinion, and notwithstanding the foregoing interpretation, the word '*wilfully*' has merely been substituted for 'intentional', the intention being, as before, that it should apply solely to fraud, it would be preferable to go back to the original wording, although this is somewhat imperfect, because culpability would then be obviously excluded, which is less clear if the word '*wilfully*' is used. It should not be forgotten

that the principles of the Convention will have to be applied later in each country and it is quite possible that the scope assigned to the word 'wilfully' may exceed what it was presumably intended to convey in Article 1. In any case, in view of Article 12 of the draft, this question might perhaps remain within the limits of the penal system of each country and be settled in accordance with its laws and legal practice. In that case, no account need be taken of these observations, which were made solely with the desire that the technical provisions should be clearer.

"As regards the last two paragraphs of this article, we do not think it is at all in accordance with penal practice nor with the legislation of most countries to couple together preparatory acts and attempts and to assume that both may constitute a commencement of execution. That is not invariably true, except in the case of attempts; it is not always true in the case of preparatory acts, in which the commencement of execution constitutes the difference between the preparatory act and the attempt. The draft departs to a certain extent from this distinction, since, although it appears to maintain it, it recognises a greater possibility than has hitherto been admitted as regards the punishment of preparatory acts. It might be preferable, if it is desired to punish these acts in certain cases, to abandon the criterion of 'a commencement of execution', because this already constitutes an attempt, and in the enumeration of those acts to adopt, owing to their exceptional nature, the '*numerus clausus*' criterion. It would be even better to leave the determination of preparatory acts and attempts to the legislation of each country, in accordance with Article 12 of the draft."

Italy (October 2nd, 1934). pages 14 and 15.

This communication stressed "the advisability, urged by the Canadian Government, of arriving at an international agreement for the supervision of punishment of offences in connection with illicit traffic in narcotics". The Government further considered "that an agreement of this kind could be reached for the moment by laying down in Article 1 of the draft now under consideration a minimum penalty of imprisonment for the gravest offences to be introduced compulsorily into the legislation of the acceding States with the adaptations required to bring it into line with the penal system in force in each State". The Government did not underestimate "the difficulty of finding a universally acceptable formula which will meet the foregoing requirements", but considered "that this is possible, and that a careful study of the question should be undertaken with a view to arriving at a satisfactory formula".

Japan (November 2nd, 1934.) page 15.

This communication contained the following observations, *inter alia* :

"1. In the first paragraph of Article 1, the acts enumerated might be replaced by the following phrase: 'Each of the High Contracting Parties agrees to make legislative provisions for severely punishing and in particular punishing by imprisonment the acts which are wilfully committed and which violate the provisions of laws and regulations which are promulgated in order to ensure the execution of the Conventions'.

"2. In the English text, second paragraph of Article 1, a phrase found in the French text 'au point de vue de la répression' is not found. Both texts should be made to correspond."

The communication added that the first part of the second paragraph of Article 1 should be revised in order to make the provision clearer.

Poland (November 13th, 1934), page 17.

This communication pointed out that, while the Polish Government approved of the principles of the draft Convention, it maintained the amendments to Article 1 which it had proposed in its letter of November 13th, 1933, and which had not been taken into account in the present text.

Sweden (January 29th, 1935), page 17.

This communication expressed the view that the revised draft did not differ in any essential respect from the first draft and referred to its observations on Article 1 submitted in a letter of December 14th, 1933.

Czechoslovakia (January 24th, 1935), page 18.

This communication observes :

"The Czechoslovak authorities wish to supplement their criticism of Article 1 by again pointing out the necessity for allowing the contracting States to grade the offences covered by Article 1 according to their gravity, and would also refer to the similar remark made by the Austrian Government, which considers that it should be possible to decide that judicial penalties and the application of Articles 2 to 5 of the draft shall only relate to the gravest form of offences.

"However, these desiderata have not been taken into consideration in the new text of Article 1.

"The Czechoslovak authorities think that, unless offences are graded in Article 1 according to their gravity, it will be impossible seriously to consider signing a Convention providing that preparatory acts must in every case be punishable. They are in favour of making the charge optional by adopting the French or Swiss text, and in any case they propose that the words in the second paragraph of Article 1 'has reached the stage of a commencement of execution' should be omitted and also the words 'if, in either case, they have reached the stage of the commencement of execution' in paragraph 3 of the same article.

"As an addition to their proposal concerning the indictment of offenders and accomplices,<sup>1</sup> the Czechoslovak authorities wish to submit the following observations: As one of the main reasons for the new Convention, the argument was advanced that it was necessary to make sure that persons who had not actually taken part in punishable activities but had arranged or directed them or benefited therefrom should not escape the punishment they had deserved. However, neither the original draft nor the present draft Convention refers in any way to co-culpability and punishable complicity. If, as the Committee proposes, the decision as to whether co-culpability and complicity in the offences covered by paragraph 1 of Article 1 are to be declared punishable is to depend on the legislation of the contracting parties, the proposed agreement will lose a considerable part of its value and the campaign against the smuggling of dangerous drugs will suffer and will become ineffective at its most vulnerable point."

## ARTICLE 2.

### DRAFT FOR FIRST CONSULTATION.

*In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 1 shall, subject to the conditions prescribed by domestic law, be recognised for the purpose of establishing habitual criminality.*

Colombia (February 9th, 1934), page 11.

The Minister for Foreign Affairs communicated the following:

"Since our legislation does not admit the principle of the international recognition of previous convictions, I consider that Article 2 of the draft should be amended so as to apply only when the offences in question have all been committed in countries which accept that principle.

"Colombia, therefore, will not regard offences committed outside her territory as previous offences and similarly Colombians will not be regarded as recidivists by reason of offences committed by them in Colombia."

Italy (November 10th, 1933), page 14.

"The Royal Government would prefer that Articles 1 and 2 should specify the minimum term of imprisonment to be introduced into the legislation of the States acceding to the Convention, at any rate in the case of the more important offences—i.e., those indicated in the said articles."

Sudan (November 1st, 1933), page 16.

"The recognition of foreign convictions for the purpose of proving a man to be an habitual offender would involve a cumbrous and costly organisation in which this country would not at present be justified in participating."

### DRAFT FOR SECOND CONSULTATION.

*(Article 2 unchanged.)*

*In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 1 shall, subject to the conditions prescribed by domestic law, be recognised for the purpose of establishing habitual criminality.*

#### *Comment.*

This article, which reproduces without alteration a provision which appeared in the Convention concerning counterfeiting currency, appears to be satisfactory as it stands. A State which recognises the principle of the international recognition of previous convictions will necessarily take into account any repetition of an offence, irrespective of the country in which it has occurred.

Egypt (July 13th, 1935).

"This article only concerns countries (Egypt is not one of them) which have accepted the principle of the international recognition of previous convictions. As very few Egyptians are

<sup>1</sup> See the observations of the Czechoslovak Government on the first draft of Article 1 above.

resident abroad, the introduction of this principle would only interest Egypt if the Consular Courts applied it in exercising jurisdiction over nationals of the capitulation Powers.

"In this case, there would be no objection to adopting the principle of the international recognition of previous offences. In that hypothesis, Article 2 of the Convention would be applied."

India (September 27th, 1934), page 12.

This communication pointed out that Article 2 did not affect India as India is not a country where the principle of the international recognition of previous convictions is recognised.

### ARTICLE 3.

#### DRAFT FOR FIRST CONSULTATION.

*In countries where the extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of an offence referred to in Article 1, shall be prosecuted and punished in the same manner as if the offence had been committed in their own territory, even in a case where the offender has acquired his nationality after the commission of the offence.*

*This provision is not binding if, in a similar case, the extradition of a foreigner cannot be granted.*

Colombia (February 9th, 1934), page 9.

"It is perfectly proper that a country which does not recognise the extradition of its nationals for the purposes of the draft Convention should take proceedings in respect of offences committed by those nationals abroad, especially as it is provided that this clause is not binding if the extradition of a foreigner cannot be granted in a similar case."

Greece (January 4th, 1934), page 14.

This communication proposed that the exception to the rule in Article 3, introduced in paragraph 2, should be confined exclusively to delinquents who have acquired the nationality of the country after the commission of the offence.

Sudan (November 1st, 1933), page 16.

"An arrangement exists between this Government and that of Egypt for the surrender of fugitive offenders. The Fugitive Offenders Ordinance of 1915 provides for the surrender of fugitives also from Kenya, Uganda and other parts of His Britannic Majesty's Dominions. It also empowers the Governor-General to direct that that Ordinance shall apply to other countries bordering on the Sudan. Nothing else in the nature of what is described as extradition is recognised in this country."

#### DRAFT FOR SECOND CONSULTATION.

*In countries where the principle of extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of an offence referred to in Article 1, shall be prosecuted and punished in the same manner as if the offence had been committed in their own territory, even in a case where the offender has acquired his nationality after the commission of the offence.*

*This provision is not binding if, in a similar case, the extradition of a foreigner cannot be granted.*

#### Comment.

The two words in roman have been added.

Spain (February 25th, 1935), page 5.

This communication pointed out that Article 3 appeared to be a consequence of the "principle of community of interest" on which the draft of the Convention is based.

The communication continues:

"The fact that Spain may punish cases covered by the Convention and committed outside the country does not imply any departure from that principle saying that she has the right to do so in certain cases in accordance with the 'principle of protection' laid down in the organic law of the judicial power.

"The application of the penalty even in cases where nationality has been acquired after the offence has been committed, is a possibly extreme but logical consequence of the above-mentioned 'principle of community of interest' which, moreover, does not clash with Spanish practice."

There is an important precedent for this in a statement by the Public Prosecutor of the Supreme Court of February 10th, 1911. The latter held that the Spanish courts were competent in cases of a change of nationality, "since, otherwise, persons who have acquired Spanish nationality would have an advantage over persons who were Spanish by birth".



## ARTICLE 4.

### DRAFT FOR FIRST CONSULTATION.

*Foreigners who have committed abroad any offence referred to in Article 1 and who are in the territory of a country whose internal legislation recognises as a general rule the principle of the prosecution of offences committed abroad shall be prosecuted and punished in the same way as if the offence had been committed in the territory of that country.*

*The obligation to take proceedings is subject to the condition that extradition has been requested and that the country to which application is made cannot hand over the person accused for some reason which has no connection with the offence.*

Canada (April 19th, 1934), page 9.

"As Canada does not, as a general rule, recognise the prosecution and punishment of offenders for extra-territorial crimes, this article would not impose any obligation upon her, but it would appear to establish a principle to which exception might be taken, and, in a country to which the article would apply, a person who was not extraditable would be prosecuted under conditions in which it would normally be very difficult to attempt to administer justice in respect of the offence. For example, if a Canadian citizen were accused of having committed a narcotic offence in Canada, had escaped, and was found to be in a distant country with which Canada had no extradition arrangements in narcotic matters, the difficulties in the way of subjecting him to prosecution at the instance of the Canadian Government, and particularly of proving the case, would be very considerable. The recognition of extra-territorial crime is rare and exceptional in all British countries.

"It is suggested that the second paragraph might indicate more clearly the intention as to conditions under which the obligation would arise. This might, at present, be construed as indicating a condition in which there are no extradition arrangements, or possibly something quite different."

Sudan (November 1st, 1933), page 16.

"The internal legislation of the Sudan does not recognise the principle of the prosecution of foreigners for offences committed abroad, but a foreigner who, by any act done outside the Sudan, is a party (whether as principal or abettor) to any offence committed either wholly or in part in the Sudan, is liable to punishment here. The surrender of foreigners who are fugitive offenders from adjacent countries is governed by the Ordinances mentioned in the comments on the preceding article."

Union of Soviet Socialist Republics (January 19th, 1934), page 19.

"The words 'whose internal legislation recognises as a general rule the principle of the prosecution of offences committed abroad' should be deleted, as they considerably restrict the prosecution of persons engaged in the illicit traffic."

### DRAFT FOR SECOND CONSULTATION.

*(Article 4 unchanged.)*

Spain (February 25th, 1935), page 9.

"The wording of the previous draft has been kept and we do not consider this very satisfactory.

"A careful perusal of the article shows that the second paragraph is the most important one, as the whole of the first paragraph is subject to the condition that extradition has been requested and cannot be granted. Even admitting this precedent in regard to extradition, which is correct, since it implies a recognition of the fact that each State has the primary right to try its own nationals (which is also implied in Article 3), it appears to be more satisfactory and also more practical not to make the request for prosecution and punishment in the country of refuge dependent on the recognition or non-recognition of the principle in question. If the present text is retained, the proposed scope of the Convention, according to its Preamble and Article 1, will be limited to a formal procedure since, according to the present wording of Article 4, it appears that if extradition is not practicable—in the event, for instance, of a political offence—and the principle of extra-territoriality mentioned above is not admitted either, it will not be possible to punish the foreign offender who has taken refuge in the country. This appears to be correct in accordance with the 'right of asylum' but it is not in conformity with the 'principle of community of interests' which, if it is to be effective, must naturally take precedence over that right.

"Consequently, the reference to international prosecution greatly restricts the draft and should be eliminated in accordance with the aims of the draft. In any case, the restriction will have no practical effect, since most countries recognise extra-territoriality to some extent."



India (September 27th, 1934), page 12.

The communication observes :

"The Indian Legislature has no power to provide for the punishment of offences committed outside India by *foreigners*. The application of Article 4 to India would therefore have to be reserved in the manner adopted in Part II of the Protocol to the Convention for the Suppression of Counterfeiting Currency in respect of Article 9 of that Convention."

*Note.*—This reservation was worded thus :

"The Government of India make a reservation to the effect that Article 9 does not apply to India, where the power to legislate is not sufficiently extensive to admit of the legislation contemplated by this article."

Japan (November 2nd, 1934), page 15.

The communication pointed out that, since it would appear that a large number of countries, among them Japan, find it difficult to recognise the principle embodied in Article 4 as a general rule, this article might be deleted or adequately revised.

## ARTICLE 5.

### DRAFT FOR FIRST CONSULTATION.

*The offences referred to in Article 1 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.*

*The High Contracting Parties who do not make extradition conditional on the existence of a treaty of reciprocity henceforward recognise the offences referred to in Article 1 as cases of extradition as between themselves.*

*Extradition shall be granted in conformity with the law of the country to which application is made. The latter shall have the right to judge whether the offences adduced are sufficiently serious either for the granting of extradition or for effecting provisional arrest.*

Austria (May 17th, 1934), page 7.

"As regards extradition, the Federal Government is of opinion that it should be granted only in the case of acts punishable by judicial penalties.

"At the same time, the Federal Government desires to point out that, in its view, the obligations relating to extradition provided for in the draft Convention should be without prejudice to the more extensive rights and obligations ensuing, in the matter of extradition, from agreements already existing between certain countries (as, for example, Customs cartels).

"As regards the last sentence of Article 5, it would perhaps be preferable to find a formula authorising the contracting parties to fix by a general autonomous rule what is to be regarded as a sufficiently serious act, in place of the present text, which provides for the separate appreciation of each individual case."

Canada (April 19th, 1934), page 9.

"Very great advantages would accrue from the acceptance of the principle of universal extradition for narcotic offences, although the operation of both Article 1 and Article 5 would appear to be inadequate in their present form. If, however, Article 1 is redrafted in order to comply with suggestions (a), (b) and (c), the desired result would appear to be achieved. Canada's experience in that regard is indicated by having negotiated extradition arrangements in 1924 and 1925 with the United States of America, which even yet are not entirely adequate and are the subject of present negotiation."

For suggestions (a), (b) and (c), see the annotations to Article 1.

United States of America (April 13th, 1934), page 6.

Subject to this, that the United States Government did not consider it necessary or desirable to punish attempts as such unless attempts grow out of a conspiracy to violate the law, the Government was of the opinion that all the offences contemplated by the draft Treaty could be treated as extraditable.

Greece (January 4th, 1934), page 14.

This communication proposed that the provision at the end of Article 5 whereby the parties are empowered to judge whether the offences adduced are "sufficiently serious" should be cancelled.

Sweden (December 14th, 1933), page 17.

This communication pointed out that Sweden would have to introduce considerable changes in its laws before she could accept a convention embodying certain of the provisions in the

draft. In particular, the provisions referring to extradition would necessitate changes affecting the very principles of Swedish law on the subject.

The following comment and suggestion was made in regard to Article 5 :

"In a great many countries, among them Sweden, it would seem to be a rule of law that offences against special criminal laws do not give rise to extradition. Under the law of many countries, one requisite for extradition is that the offence for which extradition is demanded must be punishable with a heavier sentence than that which is normally inflicted for offences of the kind covered by the present draft.

"Here again—as was pointed out in the comments on the second paragraph of Article 1—it is hardly likely that any country would be prepared, in order to accede to a convention such as this, to abandon the general principles of its law. It would therefore be highly desirable to amend these clauses. Article 5 might, like Articles 2 to 4, be made optional. Possibly this article might be so drafted as to ensure that, wherever the law of any contracting party admits, as a general principle, extradition for the acts specified in Article 1, these acts be automatically included as extraditable offences in every extradition treaty which has been, or may be, concluded between that party and any other party which allows extradition for the same acts."

Czechoslovakia (May 24th, 1934), page 21.

"The second sentence of the last paragraph of Article 5 is not sufficiently clear with regard to the option of the State applied to decide whether the facts cited are sufficiently serious to warrant the granting of extradition or the taking of the person into provisional custody. The Czechoslovak Government supposes that there is no intention of allowing proceedings for the determination of guilt during the extradition procedure, as this question should be left to the court having jurisdiction to convict. Otherwise, there would be two sets of judicial proceedings, one taking place before the other, a situation which would be contradictory to the concept of extradition. It would also be desirable to make it quite clear whether the text means detention pending extradition, or some other form of detention.

"Generally speaking, it may be said that the Convention is concerned, in the first place, with extradition for the punishable acts specified therein and committed elsewhere than in the offender's own country, and regards the place of arrest as a subsidiary factor in determining jurisdiction. The question to what State the offender should be extradited—the State in which the punishable act has been committed or the State of which the offender is a national, or the State in which proceedings have already been begun (for instance, in the matter of subjective association)—will, it appears, be left in each individual case to the decision of the States concerned."

#### DRAFT FOR SECOND CONSULTATION.

*Subject to the provisions of the last paragraph of this article, the offences referred to in Article 1 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.*

*The High Contracting Parties who do not make extradition conditional on the existence of a treaty or reciprocity henceforward recognise the above-mentioned offences as cases of extradition as between themselves.*

*Extradition shall be granted in conformity with the law of the High Contracting Party to whom application is made, and the treaties in force between the country asking for extradition and the country to whom the request is made.*

*The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if the High Contracting Party or his proper tribunal considers that the offence of which the fugitive offender is accused or convicted is not sufficiently serious.*

#### *Comment.*

The alterations are mainly of a drafting character. A reference to extradition treaties has been added at the end of the first sentence of the third paragraph of the original text, and the second sentence of that paragraph, which gives the discretion to refuse extradition if the offence is not thought to be sufficiently serious, has been redrafted. In the original text, the words "offences adduced" appeared to contemplate that, in the case of a convicted offender, as well as the case of an accused person, the evidence should be submitted. The new text makes it clear that, in the case of the former, the question of extradition can, in accordance with the more usual practice, be dealt with on submission of a certificate of conviction without the evidence on which the conviction was obtained.

Austria (February 4th, 1935), page 3.

This communication drew attention to a point mentioned in a previous letter of May 17th (see above under first draft of Article 5)—namely, "that the Convention to be concluded should not affect the more extensive rights and obligations ensuing in a matter of extradition from agreements already existing between certain countries (as for example, Customs cartels)".

The communication added that, if no account of this point were taken in a Convention, the Federal Government would be unable to sign it without an appropriate reservation (see also above observations by Austria on second draft of Article 1).

United Kingdom (April 29th, 1935), page 4.

"The words in the third paragraph of the article 'and the treaties in force between the country asking for extradition and the country to whom the request is made' are superfluous and might well be omitted. In every case in which extradition is granted, it will of necessity be in accordance with treaties in force between the countries concerned."

Canada (September 12th, 1934), page 4.

See observations in letter quoted under second draft of Article 1.

China (May 7th, 1935), page 5.

This communication stated that the Chinese Government desired to make a general reservation with regard to all provisions of the draft Convention which involve the question of extradition and the principle of the prosecution of offences committed abroad, regarding which, owing to the existence of foreign consular jurisdiction in China, the Government is unable for the time being to undertake any obligation.

Spain (February 25th, 1935), page 6.

This letter observed, in regard to Article 5 that, in so far as it aims at preventing any person from eluding punishment owing to the lack of rules as to extradition, it is in accordance with the object of the draft and facilitates the procedure. This article clearly reveals once again the conflict of principles involved in the previous article."

Czechoslovakia (January 24th, 1935), page 17.

This letter observed that the Czechoslovak authorities would endorse the legal objections raised by various Governments to the last paragraph of Article 5 "which introduces a factor of uncertainty, particularly in regard to extradition. They think it should be considered whether, in accordance with the Austrian Government's proposal, the concrete appreciation of the gravity of the offence *ad hoc* could not be more effectively replaced by distinguishing between the elements constituting the offence according to the gravity as already defined in Article 1."

## ARTICLE 6.

### DRAFT FOR FIRST CONSULTATION.

*Drugs and substances employed in illicit traffic shall be seized and confiscated.*

Czechoslovakia (May 24th, 1934), page 22.

"Article 6 should be supplemented by a provision to the effect that, not only the 'producta', but also the 'instrumenta sceleris', such as the instruments and appliances used for the manufacture of opium and other dangerous drugs, etc., must be seized. The term 'illicit traffic' doubtless includes all the forms of criminal activity specified in Article 1 of the draft Convention."

Union of Soviet Socialist Republics (January 16th, 1934), page 10.

This communication proposed the following draft of Article 6, and added the note below:

"The drugs and substances employed for the illegal acts mentioned in Article 1 shall be seized and confiscated."

*Note.*—It is desirable to place no restriction on the confiscation of narcotic drugs, but to base it in all cases on illegal acts.

### DRAFT FOR SECOND CONSULTATION.

*Drugs, substances and articles employed in illicit traffic shall be seized and confiscated.*

#### *Comment.*

The words "and articles" have been added to the original text in order to make it clear that any article in which the drugs have been concealed shall be equally liable to seizure and confiscation.

India (September 27th, 1934), page 13.

" This article should be amended so as to exclude from its purview drugs, substances and articles that are the subject of technical offences.—*e.g.*, mere irregularities in procedure."

Japan (November 2nd, 1934), page 15.

" In Article 6, the meaning of the terms ' articles ' or ' objects ' is not clear; they may be replaced by the term ' recipient ' or such equivalent."

The communication added that the following points should be made clear—viz., whether the terms " illicit traffic " used in Article 6 included illicit manufacture and whether the terms " seized and confiscated " included seizure and confiscation through administrative measures.

Netherlands (February 6th, 1935), pages 16 and 17.

" Article 6 provides that not only ' drugs and substances ' but also ' articles employed in the illicit traffic ' shall be seized and confiscated. It is stated in the comment that ' articles employed in the illicit traffic ' include ' any article in which the drugs have been concealed '. This categorical provision might give rise to practical difficulties and to unfair confiscations.

" It would be preferable, while still providing that drugs and substances employed in the illicit traffic shall compulsorily be confiscated, to make the confiscation of articles employed in that traffic optional and to allow the judge to decide whether they should be confiscated."

Czechoslovakia (January 24th, 1935), page 17.

The letter referred to the original declarations by the Czechoslovak authorities with regard to Article 6 (see above under first draft).

## ARTICLE 7.

### DRAFT FOR FIRST CONSULTATION.

*Each of the High Contracting Parties shall set up a central office responsible for all operations calculated to prevent the illicit acts referred to in Article 1 and to ensure their punishment.*

*This central office shall be in close contact :*

(a) *With other official institutions dealing with the drugs and substances referred to in Article 1;*

(b) *With the police authorities within the country;*

(c) *With the central offices of other countries.*

*This office shall centralise all information of a nature to facilitate the investigation, prevention and punishment of illicit traffic.*

*The central offices of the different countries may correspond with each other direct.*

Czechoslovakia (May 24th, 1934), page 22.

" The Czechoslovak Government has no observations to add regarding Articles 7 to 12, which have been taken from the Convention for the Suppression of Counterfeiting Currency of April 20th, 1929. It would merely point out that, owing to the nature of the subject, a considerable number of representatives of the health services and of experts (doctors, pharmacists and chemists) should be included in the personnel of the central offices mentioned in the draft Convention."

### DRAFT FOR SECOND CONSULTATION.

*Each of the High Contracting Parties shall, if it has not already done so, set up a central office responsible for carrying out all operations necessary to prevent the illicit acts referred to in Article 1 and to ensure that steps are taken to prosecute persons guilty of such acts.*

*This central office shall be in close contact :*

(a) *With other official institutions dealing with the drugs and substances referred to in Article 1;*

(b) *With the police authorities within the country;*

(c) *With the central offices of other countries.*

*This office shall centralise all information of a nature to facilitate the investigation, prevention and punishment of illicit traffic.*

*The central offices of the different countries may correspond with each other direct.*

*Comment.*

The words in roman are merely drafting alterations.

India (September 27th, 1934), pages 13 and 14.

"The Government of India are unable to subscribe to the Convention as drafted unless some of the clauses of this article are amended. The Government of India have been forced to postpone the creation of a Central *Intelligence* Bureau on account of financial stringency and it is impossible to foretell how soon economic conditions will improve so far as to permit of the revival of the proposal. They are, however, prepared to appoint the Central Board of Revenue as the 'Central Office' for the purposes of Articles 7 to 10, but they anticipate serious difficulties in complying with the provisions of Article 7. The first difficulty arises in connection with the first sentence of the article. In its capacity as the Central Revenues Branch of the Finance Department, the Central Board of Revenue is responsible for the Law and the rules under which measures are taken to prevent the illicit acts referred to and to ensure their punishment; but it cannot have any authority (indeed, it would be unconstitutional for it to claim authority, since excise is a transferred subject) to make itself responsible for carrying out all operations necessary to *prevent* illicit acts and to *ensure* that steps are taken to prosecute persons guilty of such acts. The Government of India could subscribe to the first sentence if it were so altered as to make the Central Office responsible for the maintenance of adequate regulations to prevent the illicit acts, etc.

"Turning to the second sentence of the article, it is not practicable for the Central Board of Revenue to be in close contact with the *police* authorities throughout the country, nor could the local governments be pressed to agree to this. This sentence would be acceptable if clause (b) were altered so as to read: 'with the authorities within the country charged with supervising the enforcement of the regulations'.

"The Government of India could then interpret the word 'authorities' as meaning the local governments (except in the case of import and export, where the Central Government are in direct control of the Customs arrangements).

"The third sentence would also have to be modified so as to confine the duties of the 'Central Office' to the centralisation of all information of such a nature as to facilitate the investigation, prevention and punishment of *international* illicit traffic. The Central Board of Revenue could not undertake to be a central intelligence bureau for all the ordinary internal illicit traffic throughout the whole country."

Netherlands (February 6th, 1935), page 17.

"Articles 7, 8 and 9 provide for the setting up of a central office for each of the High Contracting Parties. In the case of the Netherlands, whose territory is situated in three different parts of the world, it would be impracticable to entrust a central office in Europe with the execution of measures designed to prevent illicit traffic in the Netherlands Indies. The parties should be allowed to set up a central office in each of the territories which belong to them and may be situated at a great distance from each other."

## ARTICLE 8.

### DRAFT FOR FIRST CONSULTATION.

*Each central office shall co-operate with the central offices of foreign countries to the greatest extent possible in order to facilitate the prevention and punishment of the illicit traffic in the drugs and substances referred to in Article 1.*

*In urgent cases the office shall, so far as it thinks expedient, communicate to the central office of any other country concerned :*

(a) *Particulars which would make it possible to carry out any necessary investigations or operations in respect of illicit transactions in progress or proposed ;*

(b) *The exact details which it has been able to secure regarding the identity and the description of traffickers with a view to supervising their movements ;*

(c) *Discoveries of secret drug factories.*

No observations.

### DRAFT FOR SECOND CONSULTATION.

*Each office shall co-operate with the central offices of foreign countries to the greatest extent possible in order to facilitate the prevention and punishment of the illicit traffic in the drugs and substances referred to in Article 1.*

*In urgent cases, the office shall, so far as it thinks expedient, communicate to the central office of any country which may be concerned :*

(a) *Particulars which would make it possible to carry out any necessary investigations or operations in respect of illicit transactions in progress or proposed ;*

(b) *The exact details which the office has been able to secure regarding the identity and the description of traffickers with a view to supervising their movements ;*

(c) *Discoveries of secret drug factories.*

*Comment.*

The words in roman are merely drafting alterations.

United Kingdom (April 29th, 1935), page 4.

"The words 'in urgent cases' at the beginning of paragraph 2 should be omitted. They limit the scope of the article unnecessarily and appear inconsistent with the intention of Article 7."

Spain (February 25th, 1935), page 10.

"It would have been structurally more correct to confine this article within the previous one (i.e., Article 7) by extending the latter."

## ARTICLE 9.

### DRAFT FOR FIRST CONSULTATION.

*In order to ensure, improve and develop direct international co-operation in the prevention and punishment of illicit traffic in the drugs and substances referred to in Article 1, the representatives of the central offices of the High Contracting Parties shall from time to time hold conferences.*

Austria (May 17th, 1934), page 7.

"It would perhaps be well to supplement Article 9 as follows :

" 'The organisation and supervision of a central international information office might form the subject of one of these conferences.' "

Colombia (February 9th, 1934), page 12.

"When real unity of policy and action has been established among the contracting countries in the campaign against dangerous drugs, it will be desirable from every aspect to convene periodical conferences of the representatives of these countries for the objects laid down in the Convention."

Switzerland (April 27th, 1934), page 18.

"It might also be desirable to add at the end of Article 9 the following clause, contained in the Convention on Counterfeiting Currency :

" 'The organisation and supervision of a Central International Information Office may form the subject of one of these conferences.' "

### DRAFT FOR SECOND CONSULTATION.

*(Article 9 unchanged.)*

United Kingdom (April 29th, 1935), page 4.

"This article would appear to be unnecessary and might be omitted. Having regard to the existence of regular meetings of the Opium Advisory Committee, it seems undesirable to impose upon the parties to the Convention an obligation to hold conferences."

## ARTICLE 10.

### DRAFT FOR FIRST CONSULTATION.

*The transmission of letters of request relating to the offences referred to in Article 1 shall be effected :*

(a) *Preferably by direct communication between the judicial authorities or through the central offices;*

(b) *By direct correspondence between the Ministers of Justice of the two countries or by direct communication from the authority of the country making the request to the Minister of Justice of the country to which the request is made;*

(c) *Through the diplomatic or consular representative of the country making the request in the country to which the request is made. This representative shall send the letters of request direct to the competent judicial authority or to the authority appointed by the Government of the country to which the request is made and shall receive direct from such authority the papers showing the execution of the letters of request.*

*In cases (a) and (c) a copy of the letters of request shall always be sent simultaneously by the diplomatic representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made or to the higher authority indicated by the latter.*

*Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.*

*Each High Contracting Party shall notify to each of the other High Contracting Parties the method or methods of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.*

*Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.*

*The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.*

*Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws.*

Austria (May 17th, 1934), page 7.

"In view of the fact that Austria, as stated above, reserves the right to punish by means of administrative penalties certain of the acts mentioned in Article 1, it would seem desirable to provide for the possibility of direct correspondence also between the authorities called upon to inflict the said administrative penalties."

Canada (April 19th, 1934), pages 9 and 10.

"This would appear to require a great deal of further consideration. There can be no doubt that it is desirable to facilitate the obtaining of evidence in respect to the administration of justice, both civil and criminal. On the other hand, different countries have different systems, and it is considered important that letters of request should be framed in such a manner that they fit in with the system of the country in which they are to be executed.

"In the second paragraph, the words 'to the higher authority indicated by the latter' would appear susceptible of clarification.

"In the third paragraph, it is considered that letters of request should also be accompanied by translations into the language of the country in which they are to be executed, together with an adequate number of copies.

"In connection with the sixth paragraph, it is considered that letters of request should be subject to the payment of ordinary expenses. The country in which the evidence is taken could reasonably be expected to afford the assistance of its courts, but not of paying other expenses. It is suggested that all the words in this paragraph after 'taxes' should be deleted."

In the letter of November 7th, 1933, the Canadian Government stated that Articles 3, 4 and 10 contained provisions the implications of which appeared to go very considerably further than the measures normally envisaged in connection with extradition proceedings.

Sudan (November 1st, 1933), page 16.

"The procedure at present followed in connection with letters of request destined for or emanating from the Sudan is for such documents to be transmitted through the diplomatic channel. It seems desirable that this procedure should continue to be followed in connection with letters of request relating to the offences referred to in Article 1 of the Convention."

Union of Soviet Socialist Republics (January 19th, 1934), page 19.

"It would appear to be desirable to concentrate at the central offices all documentary material relating to illicit transactions in narcotic drugs. It would therefore seem desirable that subparagraph (a) should read :

" 'Preferably by direct communication between the central offices or the judicial authorities.' "

#### DRAFT FOR SECOND CONSULTATION.

*The transmission of letters of request relating to the offences referred to in Article 1 shall be effected :*

(a) *By direct communication between the competent authorities or through the central offices ;*

(b) *By direct correspondence between the Ministers of Justice of the two countries or by direct communication from the authority of the country making the request to the Minister of Justice of the country to which the request is made ;*

(c) *Through the diplomatic or consular representative of the country making the request in the country to which the request is made. This representative shall send the letters of request direct to the competent judicial authority or to the authority appointed by the Government of the country to which the request is made and shall receive direct from such authority the papers showing the execution of the letters of request.*

*In cases (a) and (c), a copy of the letters of request shall always be sent simultaneously by the diplomatic representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made or to such other authority as may be indicated by him.*

*Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.*

*Each High Contracting Party shall notify to each of the High Contracting Parties the method, or methods, of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.*

*Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.*



*The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.*

*Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws, or to execute letters of request otherwise than within the limits of their laws.*

*Comment.*

1. The word "preferably", by which the sub-paragraph (a) began, has been deleted.
2. In the same sub-paragraph (a), to cover administrative as well as judicial authorities, the words "competent authorities" replace the words "judicial authorities".
3. In the second paragraph, for clearness, the words "to the higher authority indicated by the latter" have been replaced by the words "to such other authority as may be indicated by him".
4. The words in roman have been added.

India (September 27th, 1934), page 14.

"As regards the channel for the transmission of letters of request under this article, the Government of India are of the opinion that the most convenient channel will be the third of those enumerated in the article—viz., through the diplomatic or consular representative of the country making the request in the country to which the request is made. The Government of India are opposed to direct communication between courts and Ministers of Justice."

Japan (November 2nd, 1934), page 15.

The communication pointed out that the sixth paragraph of Article 10 might be amended as follows so as to be in conformity with various national legislations: "In the execution of letters of request, fees for experts, the charges and necessary expenses shall be regulated in accordance with the legislation of the country to which the request is made". The letter further adds that, according to the present legislation in Japan, "the law of co-operation at the instance of foreign courts of justice (Articles 1, 2, 5) provides that, in the execution of letters of request by the country to which the request is made, the payment of the necessary expenses shall be guaranteed by the authority making the request".

## ARTICLE 11.

### DRAFT FOR FIRST AND SECOND CONSULTATIONS.

*The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that party's attitude on the general question of criminal jurisdiction as a question of international law.*

No observations.

## ARTICLE 12.

### DRAFT FOR FIRST CONSULTATION.

*The present Convention does not affect the principle that the offences referred to in Article 1 shall in each country, without ever being allowed impunity, be defined, prosecuted and punished in conformity with the general rules of its domestic law.*

No observations.

### DRAFT FOR SECOND CONSULTATION.

*(Article 12 unchanged.)*

United Kingdom (April 29th, 1935), page 4.

"The words 'without ever being allowed impunity' appear to be quite unnecessary and outside the scope of Article 1, inasmuch as they infer punishment in all cases. It is suggested that they should be omitted."

Spain (February 25th, 1935), page 10.

"Although the wording is possibly somewhat imperfect, the object of this article is that the offences enumerated in Article 1 may be punished in every case. The determination of

circumstances, not only those which exclude criminal responsibility altogether, but also of mitigating circumstances, etc., is obviously left to the domestic law of each country.

"In accordance with general principles—the general part of each legislation—it is entirely admissible without its being necessary to mention this in the draft, that complicity and also the various forms of co-participation should be punished according to the criminal provisions of each country. The omission of these forms from the draft therefore appears to us to be correct.

"Notwithstanding the enormous scope that can be given to this article, we would stress the observations we have already made, in respect of Article 1, concerning organisers, etc., of illicit consignments of narcotics. A correct procedure as laid down by the draft and the contents of the preamble do not permit of the inclusion in this article of the problems therein mentioned with respect to this concrete point."

## ARTICLE 13.

### DRAFT FOR FIRST AND SECOND CONSULTATIONS.

*The High Contracting Parties shall communicate to one another through the Secretary-General Of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and shall forward to the Secretary-General an annual report on the working of the Convention in their territories.*

*The High Contracting Parties who are parties to the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs, signed at Geneva on July 13th, 1931, may include the information concerning the working of the present Convention in the annual report provided for under Article 21 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs.*

Canada (April 19th, 1934), page 10. (Reply on first consultation.)

"The principle that the annual report on the working of the Convention should be included in the annual report provided for in Article 21 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs is entirely approved. It is assumed that the Secretariat would, in due course, make the necessary changes in or additions to the headings of the annual report, so as to enable all the information which is required to be embodied in one document.

"Dealing with the draft Convention as a whole, and having in mind the most urgent objective of the Opium Advisory Committee, as indicated in Section 2 of the report to the Council in connection with the matter, it would appear absolutely necessary to include, in any adequate Convention, a provision imposing upon the parties thereto the burden of making criminal acts committed within their respective jurisdiction directed against the narcotic laws of other countries, as indicated in paragraph (a) (1) of this communication. Doubtless, the Committee had in mind the problem of coping with the 'man higher up' who, from a point outside the danger zone, directs and controls the operations. It is difficult to see how his operations can be effectively coped with unless, for example, Canada makes it criminal for a person in Montreal to plan, organise and direct the shipment of narcotics into the United States of America, or to plan, organise and direct the distribution of narcotics within that or some other country. It would not appear that, in its present form, the Convention achieves that objective."

## ARTICLES 14 ET SEQ.

(The usual formal clauses.)

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### ANNEX 3.

*Series of Publications : 1936.XI.3.*

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[S.T.D./C.E./18(1).]*

*Geneva, January 8th, 1936.*

## REPORT TO THE COUNCIL OF THE COMMITTEE OF EXPERTS ENTRUSTED WITH THE REVISION OF THE DRAFT CONVENTION AND REVISED TEXT OF THE DRAFT CONVENTION.

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### REPORT TO THE COUNCIL, ADOPTED ON DECEMBER 17TH, 1935.

The Council, during its eighty-sixth session (May 1935),<sup>1</sup> considered the summoning of a Conference to examine the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs. Observations submitted by the Governments on certain articles of the draft Convention

<sup>1</sup> See *Official Journal*, June 1935, page 610.

had raised important questions involving not only some of the principles upon which the draft Convention was based, but also some of the principles underlying the various national legislations. The Council accordingly decided, before summoning the Conference, to entrust to a Committee of Experts the further revision of the text with a view to reconciling difficulties to which certain Governments had drawn attention and taking into account suggestions made by Governments which were directly connected with the objects of the Convention.

The Council invited the following Governments to appoint representatives on the Committee of Experts: Austria, the United Kingdom, Canada, Chile, Czechoslovakia, France, Greece, India, Italy, Japan, Poland, Spain, Sweden and the Union of Soviet Socialist Republics. The Council at a later session decided to extend a similar invitation to the Government of the Netherlands.

The International Criminal Police Commission in Vienna was also requested to assist the Committee of Experts in its work.

The Governments invited nominated the following experts :

<i>Austria :</i>	Dr. Bruno SCHULTZ, former Vice-President of the Vienna Police and representative of Austria on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.
<i>United Kingdom :</i>	Mr. O. F. DOWSON, C.B.E., Legal Adviser to the Home Office.
<i>Canada :</i>	Mr. P. E. RENAUD, Acting Canadian Advisory Officer, accredited to the League of Nations.
<i>Chile :</i>	M. Francisco HERNANDEZ, Chief of the Alimentation and Drug Section of the Directorate-General of Public Health.
<i>Spain :</i>	His Excellency M. Julio CASARES, representative of Spain on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.
<i>France :</i>	His Excellency M. VERCHÈRE DE REFFYE, Minister Plenipotentiary, Sub-Director of the Ministry for Foreign Affairs, assisted by M. Gaston BOURGOIS, representative of France on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.
<i>Greece :</i>	His Excellency M. BIBICA-ROSETTI, Permanent Delegate at Geneva, and M. A. CONTOUMAS, First Secretary of the Permanent Delegation to the League of Nations.
<i>India :</i>	Mr. G. S. HARDY, C.I.E., I.C.S., representative of India on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.
<i>Italy :</i>	His Excellency Senator Stefano CAVAZZONI, Representative of Italy on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs, assisted by Dr. Alberto CASTALDI, Chief of Section of the Directorate-General of Public Health.
<i>Japan :</i>	M. Takao FUJIWARA, Secretary of the Department of Home Affairs, and M. Kumao NISHIMURA, of the Japanese Consulate-General, Geneva.
<i>Netherlands :</i>	M. J. R. M. VAN ANGEREN, Chief of Division of the Department of Justice.
<i>Poland :</i>	His Excellency Dr. Witold CHODZKO, former Minister, Representative of Poland on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.
<i>Czechoslovakia :</i>	Dr. Antonin KOUKAL, Director of the Department of Justice.
<i>Union of Soviet Socialist Republics :</i>	M. Victor BROWN, Secretary of the Soviet Embassy in Paris.

The International Criminal Police Commission at Vienna nominated the following persons to take part in the work of the Committee of Experts, namely :

Mr. Norman KENDAL, C.B.E., Assistant Commissioner of the Metropolitan Police, London.  
M. Pierre MONDANEL, Controller-General of the French Sûreté Générale, Paris.  
Dr. Bruno SCHULTZ.

The Swedish Government informed the Secretary-General that, much to its regret, it was unable to accept the invitation to nominate an expert on the Committee.

The Committee of Experts met at the Secretariat of the League of Nations from December 9th to December 17th, 1935.

The Committee elected as its Chairman His Excellency M. DE REFFYE.

The following were unable to attend the meeting of the Committee : His Excellency M. Casares, M. Castaldi, M. Francisco Hernandez and Mr. Norman Kendal. M. Francisco Hernandez was replaced by M. Enrique GAJARDO V., the Permanent Delegate of Chile at Geneva. On account

of illness, M. van Angeren, to the regret of the Committee, was obliged to return to the Netherlands before the Committee had finished its work.

A Drafting Sub-Committee was appointed consisting of the following members : the CHAIRMAN of the Committee, M. CONTOUMAS, Mr. DOWSON, Dr. KOUKAL and Dr. SCHULTZ.

The Committee adopted as a basis for its work the text of the draft Convention prepared for the second consultation.

\* \* \*

To this report is attached the revised text of the draft Convention prepared by the Committee. Below will be found also observations and explanations regarding the principal questions discussed during the meetings of the Committee and certain recommendations which the Committee desires to bring to the notice of the diplomatic conference.

For the sake of convenience these observations, explanations and recommendations are arranged in the order of the articles to which they refer.

The Committee gave careful consideration to the suggestions and amendments put forward by Governments in their observations on the draft as prepared for the first and second consultations.

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#### PREAMBLE.

The Committee did not examine the text of the Preamble. Certain members felt that a Preamble was unnecessary. It was decided to leave the question of the Preamble to the diplomatic Conference.

#### ARTICLE I.

A new first paragraph was drawn up embodying a definition, for the purposes of the Convention, of the term "narcotic drugs". In the second paragraph, the general provision is reproduced whereby the High Contracting Parties undertake to adopt legislation to punish severely the offences specified in the paragraph. Finally, in the third paragraph, provision is made for the punishment, as distinct offences, of certain kinds of preparatory acts and of certain offences when committed in different countries.

In regard to the first paragraph, the definition of "narcotic drugs" is understood to include, not only drugs and substances at present covered by the International Drug Conventions in force, but all other drugs and substances which, by virtue of the provisions of those Conventions, may later be brought within their scope. The attention of the Committee was drawn to the problem of finding a general criterion to embrace the manifold acts which are usually referred to under the head of "illicit traffic". The Committee endeavoured to find satisfactory definitions of the expression "illicit traffic" and of the term "illicit". After the matter had been discussed at length, it was decided not to employ definitions. The Committee felt that it was sufficient to enumerate the acts which should be severely punished and to refer to the previous Conventions for their illicit character.

Certain experts took the view that the express mention of guilty intention was undesirable, because it would lead to this element receiving a much greater importance than that allowed by the general rules of criminal law. It would also render more difficult the effective application of the measures prescribed by the international Conventions in force.

In the second paragraph, the words "or other form of deprivation of liberty" were added to the words "by imprisonment"; this addition was intended to meet the objection that, in some countries, the notion of "imprisonment" had no precise meaning.

The various offences punishable are classified into five groups—(a), (b), (c), (d) and (e).

Group (a) specifies the same offences as are set out in the first paragraph of the draft, as prepared for the second consultation, with some further clarification of the text.

In group (b) are specified the illicit cultivation, gathering and production of raw materials. Certain members of the Committee felt considerable misgivings with respect to the insertion of this group, on the ground that it had not appeared in the two earlier drafts and was not explicitly mentioned in the terms of reference of the Committee. It was, however, decided to retain the group in Article I.

Mr. DOWSON desired that this report should contain a statement of the reasons why the United Kingdom Government were opposed to the inclusion of group (b). The subject of the cultivation of vegetables and raw materials for the preparation of dangerous drugs is an important one affecting the whole world, and it is a matter which should be taken in hand as soon as possible. But it needed, first, the widest enquiry, and even if (contrary to their view) this subject could be regarded as within the scope of the present Convention, it should not have been brought forward without such enquiry or previous consultation with Governments. Moreover, the meaning and effect of the particular proposal made to the Committee was, in the view of the United Kingdom Government, far from clear; and the resultant situation for any State subscribing to such a proposal would have to be thoroughly cleared up before it could receive serious consideration. Mr. HARDY,

the expert nominated by the Government of India, desired to be associated with these views. The Canadian, French, and Netherlands experts also made reservations in regard to group (b).

Group (c) covers the inciting or aiding and abetting of the commission of one of the offences specified in groups (a) and (b) and its insertion was intended to meet the views of certain Governments which had urged the inclusion in Article 1 of forms of participation or complicity in the principal offences. The Committee expressly intended that financing and organising should fall under group (c).

The insertion of group (d) was intended to meet the suggestion of certain Governments that participation and complicity should be covered as such.

Group (e) makes it clear that the words "commencement of execution" refer only to attempts and not to preparatory acts. Further, the words "within legal limits" were added to show that the obligation to punish preparatory acts does not extend beyond the limits laid down by internal law.

Paragraph 3 is divided into two sub-paragraphs. The object of sub-paragraph (a) is identical with that of Article 4 of the Convention for the Suppression of Counterfeiting Currency. The Committee intended to make it clear that each of the offences specified in groups (a), (b), (c) and (d) of paragraph 2 should, if committed in different countries, be regarded as distinct offences in relation to any one of the others. Thus, each of these offences would be prosecuted in the country in which the offence was committed.

Sub-paragraph (b) deals on the same lines with acts committed in one country preparatory to or in furtherance of the commission in another country of any of the offences specified in groups (a), (b) and (c) of paragraph 2.

It was thought that this provision might be appropriate for the purpose of dealing with cases not covered by group (c)—for example, the case of a trafficker who, while residing in one country, finances or directs the transport, etc., of narcotic drugs in other countries.

The Committee also took note of certain proposals which it did not find possible to incorporate in the text of Article 1 but which it considered were of sufficient importance to be mentioned in the report. The first of these proposals was that a distinction should be drawn, for the purposes of the Convention, between serious and less serious offences, but it was felt to be impracticable, in a convention, to draw any such distinction. The second proposal was to make punishable acts committed within the jurisdiction of one contracting party directed against the narcotic laws of any other contracting party. It was pointed out that the acceptance of a proposal of this kind was not practicable and that it might raise considerable difficulties. Furthermore, the matters which it was intended to cover were to a large extent already provided for under groups (c) and (e) of paragraph 2 taken in conjunction with paragraph 3. A third proposal, also not adopted, was the insertion of a provision whereby the contracting parties undertook to apply a minimum penalty of imprisonment.

## ARTICLE 2.

No substantial change.

## ARTICLE 3.

Certain members requested that it should be made quite clear in this article that there was no obligation to punish nationals who had returned to their own country after the commission abroad of one of the offences specified in Article 1, if they had already been punished abroad for that offence. The Committee did not oppose this suggestion and accordingly agreed to the insertion of the words: "without having been punished therefor".

In the second paragraph of the article, the Committee decided to replace "is not binding" by "does not apply", which is the wording used in the corresponding article of the Convention for the Suppression of Counterfeiting Currency, of 1929.

In order to clarify the meaning of the second paragraph, the Committee decided to adopt in this report the explanation given of the corresponding article by the Mixed Committee which prepared the draft Convention for the Suppression of Counterfeiting Currency. In its report, that Committee pointed out that where a delinquent commits his offence in one country and takes refuge in another, he might be prosecuted in that country or surrendered by it. In the case of *nationals*, extradition is applied in all cases by those States which allow their own nationals to be extradited and therefore the obligation to prosecute should only apply to other States, and even those States would be under no obligation if the surrender of the offender would have to be refused for a reason directly connected with the charge (e.g., period of limitation).<sup>1</sup>

## ARTICLE 4.

A proposal was made to insert after the words "the principle of the prosecution of offences committed" in paragraph 1 the words "by foreigners", but the Committee was of opinion that this would be superfluous. It was quite clear from the text of Articles 3 and 4 that Article 3 deals with the prosecution and punishment of nationals who have committed offences abroad and Article 4 with the punishment of foreigners who, after having committed an offence abroad, take refuge in another country in both cases without having been punished therefor.

<sup>1</sup> See Records of the Conference for the Suppression of Counterfeiting Currency, 1929, page 234.

In regard to this paragraph, the Government of the Union of Soviet Socialist Republics had proposed that the words "whose internal legislation recognises as a general rule the principle of prosecution of offences committed abroad" should be deleted on the ground that they considerably restricted the prosecution of persons engaged in the illicit traffic. The Committee did not accept this view and drew attention to the explanations given of the significance of these words in the discussions at the Conference which drew up the Convention for the Suppression of Counterfeiting Currency. There it was pointed out that the object of the words "as a general rule" was to exempt from the provisions of the article countries which, like the United Kingdom, generally speaking, only applied the system of territoriality in the case of offences committed abroad by foreigners.<sup>1</sup>

In paragraph 2, an amendment was proposed for the purpose of making it clear that one of the reasons for not granting extradition was the absence of an extradition treaty between the countries concerned. The Committee, considering it undesirable to alter the text of articles in the Convention for the Suppression of Counterfeiting Currency, decided not to adopt this amendment, but to record its view that this was the interpretation of the paragraph.

#### ARTICLE 5.

Article 5 remains substantially the same.

A proposal was made to specify the offences which were so serious that extradition on their account should not be refused. The Committee rejected this suggestion for the reason already given in that part of the report which deals with Article 1. The Committee was further convinced that Governments, appreciating the necessity of international co-operation for the suppression of illicit traffic in narcotic drugs, would not without good reason refuse the extradition of drug offenders.

#### ARTICLE 6.

The Committee considered it desirable to adopt the form used in Article 1: "Each of the High Contracting Parties agrees to make the necessary legislative provision . . ."

Proposals were made to include, not only narcotic drugs, but other articles intended for the commission of an offence specified in Article 1. It was also suggested that mention should be made in this paragraph of buildings, funds used in the illicit traffic and other property belonging to the traffickers. The Committee did not accept these proposals owing to the difficulty of applying them in practice, but agreed that the categories of things liable to seizure and confiscation should be extended as far as possible, in order to prevent organised traffickers from carrying on their business after having served their sentence. Some members expressed the view that confiscation of buildings, funds and other property of traffickers might appropriately fall within the penalties provided for in Article 1. The Committee suggests that this matter be considered by the diplomatic conference.

#### ARTICLE 7.

To meet the difficulties of States which are federal in character, a new paragraph (paragraph 3) was added and certain consequential changes made in the text.

Paragraph 4 was added to permit the creation of separate central offices in territories distant from the mother countries.

Certain members of the Committee of Experts requested that the attention of the diplomatic conference should be drawn to the question of the creation in each country of an adequate special police force for the purpose of taking effective measures against persons committing the offences mentioned in Article 1.

Finally, a proposal was made that the central offices be invited to exchange information in respect of offences committed within the jurisdiction of one contracting party, directed against the narcotic laws of another contracting party. This proposal was not pressed, though the right of raising it again at the diplomatic conference was reserved.

#### ARTICLE 8.

The text of the draft prepared for the second consultation was adopted with slight textual alterations consequent upon the alterations made in Article 1. In addition, the words "in urgent cases" in the second paragraph were omitted as limiting unnecessarily the scope of the article and as apparently inconsistent with the intention of Article 7.

#### ARTICLE 9.

The Committee, appreciating the importance of conferences between the representatives of central offices, feels that it should be left to the Advisory Committee on Traffic in Opium and Other Dangerous Drugs to advise on the desirability of calling meetings of the representatives of the central offices.

The Committee noted a proposal made by the Austrian and Swiss Governments that the organisation and supervision of a central international information office might form the subject of one of these meetings.

<sup>1</sup> See Records of the Conference for the Suppression of Counterfeiting Currency, 1929, page 156.

ARTICLE 10.

In Article 10 the only substantial amendment was an addition to the methods specified for the transmission of letters of request of a fourth method—viz., through diplomatic channels.

The Committee considers it important that letters of request should be drawn up in accordance with the system in use in the country in which they are to be executed. The application of this principle would undoubtedly facilitate the extradition proceedings envisaged in the Convention.

ARTICLE 11.

No change.

ARTICLE 12.

In this article, the words " without ever being allowed impunity " were omitted as superfluous.

ARTICLE 13.

The Committee decided to omit the second paragraph of the article. It is understood that the Advisory Committee on Traffic in Opium and Other Dangerous Drugs may, after the coming into force of this Convention, consider the advisability of incorporating in the form of annual reports a special section dealing with the information desired.

The Committee would point out that there will be no need for Governments to submit special annual reports on the working of the Convention, but that these reports may always be included in their general annual reports on the traffic in opium and other dangerous drugs forwarded to the Secretary-General of the League of Nations.

\* \* \*

Certain members of the Committee raised the question whether it would not be advisable to provide expressly in the Convention : (1) that nothing therein should prevent the parties in their campaign against narcotic drugs from assuming international obligations or enacting laws wider than those provided for by the Convention; (2) that the present Convention did not affect the more extensive obligations imposed by previous treaties consistent with it.

It was felt, however, that such provisions would be superfluous, as being already implied by international law, but that the attention of the diplomatic conference should be drawn to the matter.

Annex to Document Conf. S.T.D./2.  
[S.T.D./C.E.17(1)]

DRAFT CONVENTION AS REVISED BY THE COMMITTEE OF EXPERTS.

PREAMBLE.

The High Contracting Parties having resolved, on the one hand, to strengthen the measures intended to prevent infringement of the provisions of the International Opium Convention signed at The Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs signed at Geneva on July 13th, 1931, and, on the other hand, to prevent and punish by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above Conventions, the undersigned plenipotentiaries, holding full powers found in good and due form, have agreed on the following provisions (see the report to the Council under Preamble).

ARTICLE 1.

1. In the present Convention, the expression " narcotic drugs " is understood as meaning the drugs and substances covered by the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931.

2. Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other form of deprivation of liberty, the following acts if wilfully committed—namely :

(a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, brokerage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the above-mentioned international Conventions dealing with narcotic drugs;

(b) Cultivation, gathering and production in contravention of national law, with a view to obtaining narcotic drugs;

(c) The inciting or aiding and abetting of the commission of the offences specified above;

(d) Any combination or agreement to commit any of the above-mentioned offences;

(e) Attempts which have reached the stage of a commencement of execution and, within legal limits, preparatory acts.



3. (a) Each of the acts specified in groups (a), (b), (c) and (d) of the second paragraph of this article shall, if committed in different countries, be considered as a distinct offence.

(b) Any act done in preparation for or in furtherance of the commission in another country of any of the acts specified in groups (a), (b) and (c) of the second paragraph of this article shall be considered as a distinct offence.

#### ARTICLE 2.

In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 1 shall, subject to the conditions prescribed by domestic law, be recognised for the purpose of establishing habitual criminality.

#### ARTICLE 3.

1. In countries where the principle of extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of any offence referred to in Article 1, without having been punished therefor, shall be prosecuted and punished in the same manner as if the offence had been committed in the said territory, even in a case where the offender has acquired his nationality after the commission of the offence.

2. This provision does not apply if, in a similar case, the extradition of a foreigner cannot be granted.

#### ARTICLE 4.

1. Foreigners who have committed abroad any offence referred to in Article 1 without having been punished therefor, and who are in the territory of a country whose internal legislation recognises, as a general rule, the principle of the prosecution of offences committed abroad, shall be prosecuted and punished in the same way as if the offence had been committed in the said territory.

2. The obligation to take proceedings is subject to the condition that extradition has been requested and that the country to which application is made cannot hand over the person accused for some reason which has no connection with the offence.

#### ARTICLE 5.

1 Subject to the provisions of the last paragraph of this article, the offences referred to in groups (a), (c), (d) and (e) of paragraph 2 of Article 1 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty or reciprocity henceforward recognise the above-mentioned offences as cases of extradition as between themselves.

3. Extradition shall be granted in conformity with the law of the High Contracting Party to whom application is made and the treaties in force between the country asking for extradition and the country to whom the request is made.

4. The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if the said High Contracting Party or its proper tribunal considers that the offence of which the fugitive offender is accused or convicted is not sufficiently serious.

#### ARTICLE 6.

Each of the High Contracting Parties agrees to make the necessary legislative provision for the seizure and confiscation of the narcotic drugs in respect of which one of the offences specified in Article 1 has been committed, and any products or machinery, instruments, and other articles which may be used in connection with the commission of any of these offences.

#### ARTICLE 7.

1. For the purpose of facilitating the carrying-out of its obligations under this Convention, each of the High Contracting Parties shall, if it has not done so already, set up, within the framework of its domestic law, a central office for the supervision and co-ordination of all operations necessary to prevent the offences specified in Article 1 and for ensuring that steps are taken to prosecute persons guilty of such acts.

2. This central office :

(a) Shall be in close contact with other official institutions or bodies dealing with narcotic drugs and with the central offices of other countries;

(b) Shall centralise all information of a nature to facilitate the investigation and prevention of the offences specified in Article 1;

(c) May correspond direct with the central offices of other countries.

3. Where the government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and provincial governments, the supervision and co-ordination specified in paragraph 1 and the requirements specified in (a) and (b) of paragraph 2 may, as regards matters exclusively within the jurisdiction or executive authority of a provincial government, be carried out by means of a provincial central office.

4. Where the present Convention has been applied to any territory by virtue of Article . . . (the colonial article), the requirements of the present article may be carried out by means of a central office set up in or for that territory acting in conjunction, if necessary, with the central office in the metropolitan territory concerned.

5. The powers and the functions of the central office may be delegated to the special administration referred to in Article 15 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs of 1931.

#### ARTICLE 8.

1. Each central office shall co-operate with the central offices of foreign countries to the greatest extent possible, in order to facilitate the prevention and punishment of the offences specified in Article 1.

2. The office shall, so far as it thinks expedient, communicate to the central office of any country which may be concerned :

(a) Particulars which would make it possible to carry out any necessary investigations or operations in respect of any transactions in progress or proposed;

(b) The exact details which it has been able to secure regarding the identity and the description of traffickers with a view to supervising their movements;

(c) Discoveries of secret factories of narcotic drugs.

#### ARTICLE 9.

The Advisory Committee on Traffic in Opium and Other Dangerous Drugs is requested to consider from time to time the question whether it is desirable that meetings of the representatives of the central offices of the High Contracting Parties should take place, in order to ensure, improve and develop international co-operation as provided for in the previous article, and, where necessary, to give an opinion on the subject.

#### ARTICLE 10.

1. The transmission of letters of request relating to the offences referred to in Article 1 shall be effected :

(a) By direct communication between the competent authorities of each country or through the central offices, or

(b) By direct correspondence between the Ministers of Justice of the two countries or by direct communication from another authority of the country making the request to the Minister of Justice of the country to which the request is made, or

(c) Through the diplomatic or consular representative of the country making the request in the country to which the request is made. This representative shall send the letters of request direct to the competent judicial authority or to the authority appointed by the Government of the country to which the request is made and shall receive direct from such authority the papers showing the execution of the letters of request, or

(d) Through diplomatic channels.

2. In cases (a), (b) and (c), a copy of the letters of request shall always be sent simultaneously by the diplomatic representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made or to such other authority as may be indicated by him.

3. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.

4. Each High Contracting Party shall notify to each of the other High Contracting Parties the method, or methods, of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.

5. Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.

6. The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.

7. Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws or to execute letters of request otherwise than within the limits of their laws.

#### ARTICLE 11.

The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that party's attitude on the general question of criminal jurisdiction as a question of international law.

#### ARTICLE 12.

The present Convention does not affect the principle that the offences referred to in Article 1 shall in each country be defined, prosecuted and punished in conformity with the general rules of its domestic law.

ARTICLE 13.

The High Contracting Parties shall communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and shall forward to the Secretary-General an annual report on the working of the Convention in their territories.

ARTICLES 14 *et seq.*

(The usual formal clauses.)

ARTICLE . . .

This Convention shall be cited as the " Illicit Traffic in Drugs Convention, 1936 ".

ANNEX 4.

*Official No. : Conf.S.T.D. 3 and 3(a).*  
*Geneva, May 12th and June 5th, 1936.*

ARTICLE 1, PARAGRAPH 2 (b), OF THE DRAFT CONVENTION PREPARED  
BY THE COMMITTEE OF EXPERTS IN DECEMBER 1935.

REPLIES BY GOVERNMENTS TO THE SECRETARY-GENERAL'S LETTER  
OF JANUARY 31ST, 1936 (C.L.18.1936.XI).

NOTE BY THE SECRETARY-GENERAL.

In pursuance of a decision of the Council on January 20th, 1936,<sup>1</sup> ninetyeth session, the Secretary-General, by a letter of January 31st, 1936 (C.L.18.1936.XI), requested Governments to communicate to him, if possible before May 15th, 1936, any observations they might wish to make in regard to paragraph 2 (b) of Article 1 of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, as revised by the Committee of Experts in December 1935,<sup>2</sup> and particularly in regard to the possibility of including the question of illicit cultivation, gathering and production in the subject matter of the Conference, which will meet on June 8th, 1936, to adopt a final text.

The decision of the Council referred to was taken on the proposal of the representative of the United Kingdom, who stated that paragraph 2 (b) of Article 1 was a new clause which, in the opinion of his Government, entirely changed the scope of the draft Convention, and, further, that many of the producing countries had not taken part in the Committee's work through their experts. Their views on the proposal had thus not been ascertained.

(Below will be found observations made on the new clause by Governments which replied to the circular letter.)

LIST OF GOVERNMENTS WHICH FORWARDED OBSERVATIONS ON ARTICLE 1,  
PARAGRAPH 2 (b), OF THE DRAFT CONVENTION.

- |                              |   |
|------------------------------|---|
| 1. Austria                   | 14. Hungary                             |
| 2. Belgium                   | 15. India                               |
| 3. Brazil                    | 16. Lichtenstein                        |
| 4. United Kingdom            | 17. Monaco                              |
| 5. Bulgaria                  | 18. Netherlands                         |
| 6. Canada                    | 19. Poland                              |
| 7. Colombia                  | 20. Portugal                            |
| 8. Egypt                     | 21. Sudan                               |
| 9. Spain                     | 22. Switzerland                         |
| 10. Estonia                  | 23. Czechoslovakia                      |
| 11. United States of America | 24. Turkey                              |
| 12. Greece                   | 25. Union of Soviet Socialist Republics |
| 13. Haiti                    | 26. Venezuela                           |

In addition to these countries, the Governments of the Irish Free State (February 28th, 1936), Australia (May 16th, 1936) and Iceland (May 29th, 1936) stated that they had no observations to offer with regard to the new clause, while the following countries acknowledged receipt of the circular letter and/or stated that they had forwarded it for examination to the competent authorities : Afghanistan (April 22nd, 1936), Egypt (February 22nd, 1936), Finland (March 30th, 1936), Mexico (February 26th, 1936), Peru (March 10th, 1936), Uruguay (March 9th, 1936).

<sup>1</sup> See *Official Journal*, February 1936, page 69

<sup>2</sup> See Annex 3.

OBSERVATIONS MADE BY GOVERNMENTS ON ARTICLE 1, PARAGRAPH 2 (b),  
OF THE DRAFT CONVENTION.

1. Austria

(April 21st, 1936).

The Federal Government has no observations to forward, but reserves its liberty to take up a position after it has heard expressed, at the Conference itself, the opinions of the countries most directly interested in this question.

2. Belgium

(April 22nd, 1936).

The Belgian Government has no objection to the clause introduced by the Committee of Experts in paragraph 2 (b) of Article 1 of the revised text of the draft Convention which is to be submitted to the Conference in question.

3. Brazil

(April 7th, 1936).

The Brazilian Government is entirely in favour of the adoption of the new provision, which prescribes severe punishment of any cultivation, gathering and production with a view to obtaining narcotic drugs.

In view of the fact that there are large quantities, in Brazil, of diamba (*Cannabis indica* or *Cannabis sativa*) in a wild state, and that its use is tending to spread, the Brazilian Government has in mind the adoption of repressive measures in this matter and has even undertaken an investigation to this effect.

You will note from the above that the opinion of the Brazilian Government may be considered as that of a producing country.

4. United Kingdom

(May 5th, 1936).

The draft Convention was intended, as its title implies, to deal more effectively with the illicit traffic in dangerous drugs—that is, trading in opium and manufactured drugs, not for medical and scientific purposes, but for the gratification of addiction.

This illicit traffic is already dealt with by the existing Conventions, but experience has shown that there is a lack of uniformity as between one country and another as regards the measures taken for dealing with traffickers and that, in many cases, the provision made for the punishment of offences is wholly inadequate. In some countries, the maximum penalty which may be imposed is very light, and, in general, sentences of imprisonment are too seldom inflicted. The purpose and intention of the draft Convention is to secure the more uniformly severe punishment of traffickers.

His Majesty's Government has always supported the principle of the draft Convention but sees great objection to the introduction of the proposed new paragraph 2 (b) of Article 1. The control of the cultivation and harvesting of the raw materials for the manufacture of drugs has long been recognised, both by His Majesty's Government and by the Opium Advisory Committee of the League of Nations, as a matter of some urgency and considerable importance, but it has not yet been possible to deal with it. The proposal raises for each producing country a number of complicated problems which cannot be dealt with effectively without serious and exhaustive enquiry and discussion. The collection of the material to serve as the basis of such discussion has already been undertaken by the Opium Advisory Committee, but the task is not yet complete and His Majesty's Government regards the introduction into the present Convention of a clause dealing with cultivation and harvesting as both premature and misleading. Premature because the necessary information is not yet available, and misleading as creating the illusion that the League of Nations has, by this provision, done all that is required.

Moreover, the introduction of the new clause, the meaning and effect of which is not clear, entirely alters the scope of the draft Convention and would create for subscribing countries a new and difficult situation which would have to be cleared up before it could be agreed to.

5. Bulgaria

(May 27th, 1936).

The permanent delegation of Bulgaria has the honour to inform the Secretary-General . . . that the competent Royal Department has just communicated to the delegation its opinion on the said clause. The Department reads Article 1, paragraph 2 (b), of the draft Convention together with Article 12 of the same Convention, and interprets it in the sense that the contracting parties, by undertaking to introduce provisions of a penal character for imposing imprisonment on any person producing narcotic drugs, are to apply these measures only to such offences as in their opinion should, by reason of the seriousness of the offence, be punishable with imprisonment or other form of deprivation of liberty, consistently with the fundamental rules of the country's domestic laws. However, for offences of a minor character, the opinion of the Royal Department is that the signatory States preserve their liberty, in conformity with the definition adopted for the offences concerned, of laying down lighter penalties, which, in particular, would exclude deprivation of liberty.

If this is the interpretation of the clause in Article 1, paragraph 2 (b), of the draft Convention, the competent Royal Department would have no objection to raise. However, if it should be

that the said clause is to be interpreted in the sense that all offences, without exception, committed by reason of cultivating, gathering and producing narcotic drugs shall invariably be punished with deprivation of liberty, the Royal Department would find itself unable to accept the clause.

6. Canada

(*March 10th, 1936*).

The Government of Canada, appreciating that this proposal, which had not appeared in either of the earlier draft Conventions circulated for the observations of Governments, raises questions of substance that more nearly concern other Governments than themselves, believe that it would be unwise, at this stage, to extend the scope of the forthcoming Conference to include consideration of this clause. For their part, and in relation to conditions obtaining in Canada, they see no objection, on its merits, to the proposed addition to Article 1 and would be ready to discuss it at the Conference if a sufficient number of States indicated a desire to consider it more closely.

7. Colombia

(*May 13th, 1936*).

Hitherto Colombia has not produced any of the raw materials mentioned in paragraph 2 (b) of Article 1 of the draft Convention for the Suppression of the Illicit Traffic in Narcotic Drugs. The coca, which grows wild in some parts of our country, is not exported, owing to its quality and the difficulties of exploitation.

In these circumstances, I do not think there is any objection (on the contrary, there is an obvious advantage from the point of view of the suppression of the consumption of these drugs in Colombia) to our country acceding to this article, as well as to the remainder of the new draft International Convention, as already recommended by the Department.

8. Egypt

(*May 21st, 1936*).

The Egyptian Government has no observations to present on this subject. It sees no objection to the possibility of including the question of illicit cultivation, gathering and production in the subject-matter of the Conference on June 8th.

9. Spain

(*March 30th, 1936*).

The Spanish Government sees, in principle, no disadvantage in studying the adoption of legislative provisions of an international character for the punishment of any illegal and illicit cultivation, gathering and production of narcotic drugs, in view of the fact that, once the Convention has been revised, these measures will, in due course, have to undergo examination by the Ministry of Justice.

10. Estonia

(*April 1st, 1936*).

The Ministry for Foreign Affairs has the honour to inform the Secretary-General that the Estonian Government has no observations to make on this subject. As regards the possibility of including the questions of illicit cultivation, gathering and production in the programme of the Conference which is to be summoned to draw up a Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, the Government of Estonia is obliged to note that these questions have only a secondary importance in Estonia, as the plants from which narcotic drugs are prepared are not cultivated there.

11. United States of America

(*March 5th, 1936*).

The Government of the United States of America considers it important that the Conference consider prevention and punishment of illicit cultivation, gathering and production of poppy, coca and cannabis.

12. Greece

(*March 23rd, 1936*).

The Royal Government of Greece has no observations to make with reference to paragraph 2 (b) of Article 1 of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

The Greek laws now in force lay down penalties much more severe than those provided for by the draft Convention for the offences dealt with by paragraph 2 (b) of Article 1.

13. Haiti

(*February 18th, 1936*).

The Government of Haiti has only a very slight interest in the proposed addition, seeing that no such cultivation as mentioned in the Committee's report takes place in Haiti. Nevertheless, the Government can only approve the contemplated provisions, since they tend to strengthen the measures employed in the campaign against narcotic drugs.

14. Hungary

(*May 26th, 1936*).

The Hungarian Government has no observation to make as regards Article 1, paragraph 2 (b), of the revised text of the draft Convention, as that text refers to the internal laws of individual States; consequently, it depends entirely on those laws whether and within what limits the

cultivation, gathering and production of narcotic substances are allowed. Since the rules in each State as to criminal offences are co-extensive with the prohibitions laid down by its laws, there is no question in the Convention of an obligatory measure as to penal law which is to be valid independently of the laws of participating States.

## 15. India

(May 7th, 1936).

I am directed by the Secretary of State for India to state that he regrets his inability, within the time prescribed, to furnish his considered views on the paragraph in question. He endorses, however, the objections which were taken by the British and Indian members of the Committee of Experts which met in December 1935 to the attempted insertion in the draft Convention of this paragraph, which deals with a subject that falls outside the scope of the original draft Convention; and he considers that the force of this objection is well illustrated by the difficulty which the Government of India have found in dealing with the matter at short notice.

2. It is to be supposed that the inclusion of the words "in contravention of national law" is not intended to leave it open to a party to the Convention to abstain from imposing by its national law any restriction on the processes referred to in the paragraph, since that would make the paragraph practically meaningless; but if it is to be understood that acceptance of the paragraph will, if only by implication, bind the participating country to introduce such control into its national law, it will mean the acceptance of restrictions which (except in the case of opium) have not been imposed by any international Convention. This is true even of coca-leaf, (see Article 2 of the Geneva Convention of 1925), though the point is not of practical importance in India, where the tree does not grow wild and where cultivation has been voluntarily subjected to an absolute prohibition (with an academic exception in favour of cultivation by the Government). What is more important is the fact that the Convention of 1925 (Article 11) leaves the details of internal control of Indian hemp entirely to the country in which it grows or is produced; and the Government of India could not accept any new obligation in respect of this plant, even in respect of British India, without consulting the local Governments, both because the subject is constitutionally the concern of those Governments and because it is necessary to take into account the practical considerations that arise out of the fact that the plant grows wild in many parts of India. If this is true of British India, it is even more important that the Government of India should have ample time to consider what reservations, if any, would have to be made in respect of the Indian States.

3. The need for caution is reinforced by a consideration of the fact that the proposed paragraph is not in terms restricted to the opium poppy, coca-leaf and Indian hemp, but also covers other raw materials of "narcotic drugs"—a term so defined that it would apparently cover even the articles mentioned in items (d) and (g) of Article 4 of the Convention of 1925. This is merely mentioned as one illustration of the dangers of dealing with the proposal hastily.

4. On receipt of your C.L.9.1936.XI, of January 13th, 1936, the Government of India took steps to consult the local Governments regarding the revised draft Convention; but there has not been sufficient time for them to formulate and submit their views. Should enough material have been received in time, an attempt will be made to supply the representative of India with further material before the meeting of the Conference on June 8th.

5. The Secretary of State would like to make it clear that the difficulties which the Government of India feel with regard to the paragraph in question relate rather to procedure than to substance and do not prevent them from sympathising with the general objects underlying the proposal. He would further point out that its adoption would be entirely consistent with the present legal position in British India as regards the opium poppy and coca-leaf, which are dealt with by the Dangerous Drugs Act, and almost, if not entirely so, as regards Indian hemp, which is dealt with in the Excise or Abkari Acts of the various provinces.

The following additional observations were received from India in a communication dated May 30th, 1936:

I am to inform you that the Government of India have now received replies from all but one of the local Governments and Administrations and have also considered the position of the Indian States, though they have been unable to consult them. The statement of the Government of India's difficulties which was contained in paragraphs 2 and 3 of this Office letter under reference (May 7th, 1936) receives support from the observations made by several of the local Governments; in particular, it has now been ascertained that in one province, at least, where hemp grows wild, the local Excise Law—i.e., the "national law"—permits a licensee to collect it without restriction, though, of course, subsequent possession, transport and sale are controlled. A new point has also been brought out—namely, that the preparation of "prepared opium", from opium lawfully possessed, for the possessor's own consumption would fall within the meaning of the phrase "production with a view to obtaining narcotic drugs"; such preparation is allowed by Section 4 of the Dangerous Drugs Act, 1930.

It is therefore still considered that it is most important to have it made clear whether or not acceptance of the sub-paragraph in question would imply the undertaking of an obligation to amend the "national law", if necessary, so as to bring all processes covered by the sub-paragraph, without exception, under restrictive control. If not, there is, as has already been said, no reason why the sub-paragraph should not be accepted on behalf of British India, where the law does in fact impose such restrictive control on all operations of substantial importance and provides for the punishment of offences by imprisonment. If, however, there is any implied obligation of the nature mentioned, it will be necessary for India to reserve the power to make reasonable exceptions in favour of (1) the gathering of Indian hemp, which grows wild in India; (2) the cultivation, gathering and production of things from which narcotic drugs can be obtained *other* than the opium poppy, the coca-leaf plant and the Indian-hemp plant; and (3) the production of "prepared opium" within the conditions in which it is permitted by Section 4 of the Dangerous Drugs Act, 1930.

16. Liechtenstein

(February 6th, 1936).

The Principality has no objections to raise as regards Article 1, paragraph 2 (b), of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

17. Monaco

(February 17th, 1936).

Since the Principality of Monaco does not produce these substances, the particular provision concerned would have no practical importance in the legislation of Monaco.

18. Netherlands

(April 25th, 1936).

The Netherlands Government considers that the insertion of the clause by the Committee of Experts in paragraph 2 (b) of Article 1 of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs . . . is inopportune.

The said clause does not come within the scope of the draft Convention, which aims at punishing more severely than at present, particularly by imprisonment or other form of deprivation of liberty, offences against laws promulgated under existing Conventions.

As the regulation in the international field of cultivation of raw materials is only in course of preparation, the Government of the Queen feels that it would be preferable to adjourn the question of the punishment for cultivation, etc., in contravention of national law, with a view to obtaining narcotic drugs to the time when such cultivation will have come under international regulation.

19. Poland

(May 19th, 1936).

In view of the fact that Poland is a country which does not cultivate opium and does not produce opium for smoking, its agreement to the clause presented at the Council session of January 20th, 1936, for the inclusion in the Convention of the question of illicit cultivation, gathering and production would only be possible subject to the reservation that it should be stipulated in express terms that the said provision is based on the resolutions in the Hague Convention.

20. Portugal

(February 27th, 1936).

The Portuguese Government is of opinion that such a clause should not be inserted in the draft Convention on suppression, in view of the fact that studies are now being made for a new Convention on cultivation.

21. Sudan

(May 17th, 1936).

The question of illicit cultivation, gathering and production of narcotic drugs, in contravention of the national law, appears to the Sudan Government to be a proper subject for discussion at the forthcoming Conference on illicit traffic.

The Civil Secretary is to add that the Sudan Government would be willing to comply with an article obliging the contracting parties to any Convention which may be agreed upon at the Conference to make the necessary legislative provisions for severely punishing illicit cultivation and the like.

22. Switzerland

(March 5th, 1936).

In agreement with the Federal Department of the Interior, the Political Department has the honour to inform the Secretariat that the Federal authorities would not, for their part, see any objection in maintaining the clause referred to. That provision does not seem to fall outside the scope of the proposed Convention, one of the objects of which is to make adequate provision against all possibility of unduly increasing stocks of raw materials, seeing that excessive accumulation of these can only serve to encourage illicit traffic.

23. Czechoslovakia

(May 26th, 1936).

The Czechoslovak Government has no objections to the provision in Article 1, paragraph 2 (b), of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.



The Czechoslovak Government considers, however, that this new provision might possibly be put in the form of a simple recommendation, if the direct regulation of the question in the Convention were to delay the conclusion of the Convention or its coming into force. If necessary, it might also be desirable to take into account the possibility of giving some consideration to those contracting States which, for various reasons, would not feel it desirable to assume such obligations under the Convention.

24. Turkey

(May 14th, 1936).

Laws Nos. 2253 and 2313 already contain the necessary provisions for punishing any cultivation, in contravention of national law, with a view to obtaining narcotic drugs.

The clause added by the Committee of Experts alters the subject-matter and scope of the draft Convention and, further, as none of the countries producing raw materials was represented in the said Committee, the question cannot properly be discussed at the forthcoming Conference for the Suppression of Illicit Traffic. The question of cultivation, gathering and production could be made the subject of another Conference.

25. Union of Soviet Socialist Republics

(April 16th, 1936).

The Government of the Union of Soviet Socialist Republics approves of the clause introduced by the Committee of Experts in paragraph 2 (b) of Article 1 of the draft Convention for the Suppression of Illicit Traffic in Dangerous Drugs.

The Government of the Union takes the view that the undertaking of the contracting parties to make the necessary legislative provisions for punishing, with deprivation of liberty, persons who engage in the illicit cultivation, gathering and production of raw materials, in contravention of national law, and with a view to obtaining narcotic drugs, is desirable, for these particular measures would render the international campaign against narcotic drugs more effective.

26. Venezuela

(March 18th, 1936).

Venezuela is not faced with any problems requiring solution as regards illicit cultivation, gathering or production, since in this country there has hitherto been no cultivation with a view to growing raw materials intended for the production of narcotic substances of any kind.

Venezuela is always ready to introduce legislative provisions severely punishing any cultivation, gathering or production contrary to the laws governing these activities.

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ANNEX 5.

Conf. S.T.D./5.

RULES OF PROCEDURE OF THE CONFERENCE,  
ADOPTED ON JUNE 8TH, 1936.

ARTICLE 1.

The Conference consists of the delegations appointed by the Governments invited to the Conference.

Each delegation is composed of one or several delegates who may be accompanied by supplementary delegates, advisers and secretaries.

ARTICLE 2.

The President opens, suspends and closes the meetings; he submits to the Conference all communications the importance of which appears to justify this measure; ensures the observation of the rules of procedure, accords the right to address the Conference, pronounces the closure of discussions, puts questions to the vote and announces the result of the vote.

The Conference elects its Vice-President, who replaces the President when necessary.

ARTICLE 3.

The Bureau of the Conference shall consist of the President of the Conference, the Vice-President, and nine other members.

ARTICLE 4.

The Conference may, at any time, decide to sit in plenary conference or constitute itself as committee or set up special committees.

ARTICLE 5.

All meetings of the Conference shall be public, unless a decision is taken to the contrary. Decisions taken at private meetings shall be announced at a public meeting. The special committees and sub-committees shall decide whether their meetings will be public or private.

ARTICLE 6.

No delegate may address the Conference without having previously obtained the authorisation of the President. The President may withdraw the permission to speak if the delegate's remarks are not relevant to the subject of the debate.

In the course of the discussion of any question, any delegate may raise a point of order, which shall immediately be decided.

The technical delegates and experts accompanying the delegates may be allowed to speak under the same conditions as the delegates.

ARTICLE 7.

Speeches in French shall be interpreted in English, and *vice versa*, by an interpreter belonging to the Secretariat.

A delegate speaking in another language must himself provide for a translation of his speech into French or English.

A delegate may cause to be distributed documents written in a language other than French or English, but the Secretariat is not obliged to have them translated or printed.

ARTICLE 8.

No draft resolution, amendment or motion shall be discussed or voted upon at any meeting, of which copies have not been communicated to the delegates before the meeting, except in the following cases :

(1) The Conference may decide at any meeting, by unanimous vote, to allow a draft resolution or motion proposed at the meeting to be discussed and voted upon;

(2) The President may, during the debate on any resolution or motion, allow any amendment to the resolution or motion which may be proposed during the debate to be discussed and voted upon if the text of the amendment is communicated to him in writing.

ARTICLE 9.

A delegate may, at any time, request that the debate be closed. The President shall take the opinion of the Conference upon the motion of closure. If the majority of the Conference approves the motion, the President shall declare the closure of the debate.

ARTICLE 10.

Each Government represented shall have one vote.

Voting on resolutions to be taken by the Conference shall, unless the Conference decide otherwise, be taken by a roll-call, the delegations being called in the French alphabetical order of the names of the Governments represented.

All elections shall be made by a secret ballot, unless they are made by acclamation.

ARTICLE 11.

At the conclusion of each meeting, Minutes shall be prepared by the Secretariat and circulated to the delegates as soon after as possible.

The record of the meeting shall become final forty-eight hours after circulation.

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ANNEXE 6.

TEXTE DE LA CONVENTION DE 1936 POUR LA RÉPRESSION DU TRAFIC  
ILLICITE DES DROGUES NUISIBLES, SIGNÉE LE 26 JUIN 1936.

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ANNEX 6.

TEXT OF THE CONVENTION OF 1936 FOR THE SUPPRESSION OF THE  
ILLICIT TRAFFIC IN DANGEROUS DRUGS, SIGNED ON JUNE 26TH, 1936.

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ANNEXE 6.

Série de publications : 1936.XI.II

N° officiel : C.286.M.174.1936.XI.

Genève, le 22 juillet 1936.

TEXTE DE LA CONVENTION DE 1936 POUR LA RÉPRESSION DU TRAFIC  
ILLICITE DES DROGUES NUISIBLES, SIGNÉE LE 26 JUIN 1936.

CONVENTION DE 1936 POUR LA RÉPRESSION DU TRAFIC ILLICITE  
DES DROGUES NUISIBLES.

Ayant résolu, d'une part, de renforcer les mesures destinées à réprimer les infractions aux dispositions de la Convention internationale de l'opium, signée à La Haye le 23 janvier 1912, de la Convention signée à Genève le 19 février 1925 et de la Convention pour limiter la fabrication et réglementer la distribution des stupéfiants, signée à Genève le 13 juillet 1931, et, d'autre part, de combattre, par les moyens les plus efficaces dans les circonstances actuelles, le trafic illicite des drogues et substances visées par ces Conventions,

Ont désigné pour leurs plénipotentiaires :

lesquels, après avoir produit leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes :

*Article premier.*

1. Dans la présente Convention, on entend par « stupéfiants » les drogues et substances auxquelles s'appliquent ou s'appliqueront les dispositions de la Convention de La Haye du 23 janvier 1912 et des Conventions de Genève du 19 février 1925 et du 13 juillet 1931.

2. Aux termes de la présente Convention, on entend par « extraction » l'opération par laquelle on sépare un stupéfiant de la substance ou du composé dont il fait partie, sans qu'il y ait fabrication ou transformation proprement dites. Cette définition du mot « extraction » ne vise pas les procédés par lesquels on obtient l'opium brut du pavot à opium, ces procédés étant couverts par le terme « production ».

*Article 2.*

Chacune des Hautes Parties contractantes s'engage à édicter les dispositions législatives nécessaires pour punir sévèrement, et notamment de prison ou d'autres peines privatives de liberté, les faits suivants, à savoir :

a) La fabrication, la transformation, l'extraction, la préparation, la détention, l'offre, la mise en vente, la distribution, l'achat, la vente, la cession à quelque titre que ce soit, le courtage, l'envoi, l'expédition en transit, le transport, l'importation et l'exportation des stupéfiants contraires aux stipulations desdites conventions;

b) La participation intentionnelle aux faits visés dans cet article;

c) L'association ou l'entente en vue de l'accomplissement d'un des faits visés ci-dessus;

d) Les tentatives et, dans les conditions prévues par la loi nationale, les actes préparatoires.

*Article 3.*

Les Hautes Parties contractantes qui possèdent une juridiction extraterritoriale sur le territoire d'une autre Haute Partie contractante s'engagent à édicter les dispositions législatives nécessaires pour punir leurs ressortissants s'étant rendus coupables sur ce territoire de tout fait visé à l'article 2, au moins aussi sévèrement que si le fait avait été commis sur leur propre territoire.

*Article 4.*

Si des faits rentrant dans les catégories visées à l'article 2 sont commis dans des pays différents, chacun d'eux sera considéré comme une infraction distincte.

*Article 5.*

Les Hautes Parties contractantes dont la loi nationale régit la culture, la récolte et la production en vue de l'obtention des stupéfiants, rendront de même sévèrement punissable toute infraction à cette loi.

*Article 6.*

Les pays qui admettent le principe de la récidive internationale reconnaissent, dans les conditions prévues par la loi nationale, comme génératrices d'une telle récidive, les condamnations étrangères prononcées du chef de l'un des faits visés à l'article 2.

ANNEX 6.

*Series of Publications : 1936.XI.II.*

*Official No. : C.286.M.174.1936.XI.*

Geneva, July 22nd, 1936.

TEXT OF THE CONVENTION OF 1936 FOR THE SUPPRESSION OF THE  
ILLICIT TRAFFIC IN DANGEROUS DRUGS, SIGNED ON JUNE 26TH, 1936.

CONVENTION OF 1936 FOR THE SUPPRESSION OF THE ILLICIT TRAFFIC  
IN DANGEROUS DRUGS.

Having resolved, on the one hand, to strengthen the measures intended to penalise offences contrary to the provisions of the International Opium Convention signed at The Hague on January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs signed at Geneva on July 13th, 1931, and, on the other hand, to combat by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above Conventions.

Have appointed as their Plenipotentiaries :

who, having produced their full powers, found in good and due form, have agreed on the following provisions :

*Article 1.*

1. In the present Convention, "narcotic drugs" shall be deemed to mean the drugs and substances to which the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931, are now or hereafter may be applicable.

2. For the purposes of the present Convention, the word "extraction" connotes an operation whereby a narcotic drug is separated from the substance or compound of which it forms part, without involving any actual manufacture or conversion properly so called. This definition of the word "extraction" is not intended to include the processes whereby raw opium is obtained from the opium poppy, these being covered by the term "production".

*Article 2.*

Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, the following acts—namely :

(a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the said Conventions;

(b) Intentional participation in the offences specified in this Article;

(c) Conspiracy to commit any of the above-mentioned offences;

(d) Attempts and, subject to the conditions prescribed by national law, preparatory acts.

*Article 3.*

The High Contracting Parties who possess extra-territorial jurisdiction in the territory of another High Contracting Party undertake to enact the necessary legislative provisions for punishing such of their nationals as are guilty within that territory of any offence specified in Article 2 at least as severely as if the offence had been committed in their own territory.

*Article 4.*

Each of the acts specified in Article 2 shall, if committed in different countries, be considered as a distinct offence.

*Article 5.*

The High Contracting Parties, whose national law regulates cultivation, gathering and production with a view to obtaining narcotic drugs, shall likewise make severely punishable contraventions thereof.

*Article 6.*

In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 2 shall, subject to the conditions prescribed by the domestic law, be recognised for the purpose of establishing habitual criminality.

*Article 7.*

1. Dans les pays qui n'admettent pas le principe de l'extradition des nationaux, les ressortissants qui sont rentrés sur le territoire de leur pays, après s'être rendus coupables à l'étranger de tout fait visé à l'article 2, doivent être poursuivis et punis de la même manière que si le fait avait été commis sur ledit territoire, et cela même dans les cas où le coupable aurait acquis sa nationalité postérieurement à l'accomplissement d'une infraction.

2. Cette disposition n'est pas applicable si, dans un cas semblable, l'extradition d'un étranger ne peut pas être accordée.

*Article 8.*

Les étrangers qui ont commis à l'étranger un des faits prévus par l'article 2 et qui se trouvent sur le territoire d'une des Hautes Parties contractantes doivent être poursuivis et punis de la même manière que si le fait avait été commis sur ce territoire, lorsque les conditions suivantes sont réunies :

a) L'extradition ayant été demandée, n'a pu être accordée pour une raison étrangère au fait même;

b) La législation du pays de refuge admet comme règle générale la poursuite d'infractions commises par des étrangers à l'étranger.

*Article 9.*

1. Les faits prévus par l'article 2 seront de plein droit compris comme cas d'extradition dans tout traité d'extradition conclu ou à conclure entre les Hautes Parties contractantes.

2. Les Hautes Parties contractantes qui ne subordonnent pas l'extradition à l'existence d'un traité ou à une condition de réciprocité, reconnaissent les faits visés ci-dessus comme cas d'extradition entre elles.

3. L'extradition sera accordée conformément au droit du pays requis.

4. La Haute Partie contractante à laquelle il sera adressé une demande d'extradition aura, dans tous les cas, le droit de refuser de procéder à l'arrestation ou d'accorder l'extradition si ses autorités compétentes estiment que le fait motivant les poursuites ou ayant entraîné la condamnation n'est pas assez grave.

*Article 10.*

Les stupéfiants, ainsi que les matières et instruments destinés à l'accomplissement d'un des faits prévus par l'article 2 sont susceptibles d'être saisis et confisqués.

*Article 11.*

1. Chaque Haute Partie contractante devra instituer, dans le cadre de sa législation nationale, un office central chargé de surveiller et de coordonner toutes les opérations indispensables pour prévenir les faits prévus par l'article 2, et de faire en sorte que des mesures soient prises pour poursuivre les personnes coupables de faits de ce genre.

2. Cet office central :

a) Devra se tenir en contact étroit avec les autres institutions ou organismes officiels s'occupant des stupéfiants;

b) Devra centraliser tous les renseignements de nature à faciliter les recherches et la prévention des faits prévus par l'article 2, et

c) Devra se tenir en contact étroit et pourra correspondre directement avec les offices centraux des autres pays.

3. Quand le Gouvernement d'une Haute Partie contractante a le caractère fédéral ou quand l'autorité exécutive de ce Gouvernement est répartie entre le Gouvernement central et des gouvernements locaux, la surveillance et la coordination indiquées au paragraphe 1 et l'exécution des obligations spécifiées aux alinéas a) et b) du paragraphe 2 s'organiseront conformément au système constitutionnel ou administratif en vigueur.

4. Dans le cas où la présente Convention serait appliquée à un territoire quelconque en vertu de l'article 18, l'application des dispositions du présent article pourra être assurée par la création d'un office central établi dans ou pour ce territoire et agissant, en cas de besoin, en liaison avec l'office central du territoire métropolitain intéressé.

5. Les pouvoirs et les compétences prévus par l'office central peuvent être délégués à l'Administration spéciale prévue par l'article 15 de la Convention de 1931 pour limiter la fabrication et réglementer la distribution des stupéfiants.

*Article 12.*

1. L'office central collaborera, dans la plus large mesure possible, avec les offices centraux étrangers, pour faciliter la prévention et la répression des faits prévus par l'article 2.

2. Cet organisme communiquera, dans les limites où il le jugera utile, à l'office central de tout autre pays qui y serait intéressé :

a) Les renseignements pouvant permettre de procéder à toutes vérifications et opérations relatives aux transactions en cours ou projetées;

*Article 7.*

1. In countries where the principle of the extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of any of the offences referred to in Article 2, shall be prosecuted and punished in the same manner as if the offence had been committed in the said territory, even in a case where the offender has acquired his nationality after the commission of the offence.

2. This provision does not apply if, in a similar case, the extradition of a foreigner cannot be granted.

*Article 8.*

Foreigners who are in the territory of a High Contracting Party and who have committed abroad any of the offences set out in Article 2 shall be prosecuted and punished as though the offence had been committed in that territory if the following conditions are realised—namely, that :

(a) Extradition has been requested and could not be granted for a reason independent of the offence itself;

(b) The law of the country of refuge considers prosecution for offences committed abroad by foreigners admissible as a general rule.

*Article 9.*

1. The offences set out in Article 2 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty or on reciprocity shall as between themselves recognise the offences referred to above as extradition crimes.

3. Extradition shall be granted in conformity with the law of the country to which application is made.

4. The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if his competent authorities consider that the offence of which the fugitive offender is accused or convicted is not sufficiently serious.

*Article 10.*

Any narcotic drugs as well as any substances and instruments intended for the commission of any of the offences referred to in Article 2 shall be liable to seizure and confiscation.

*Article 11.*

1. Each of the High Contracting Parties shall set up, within the framework of its domestic law, a central office for the supervision and co-ordination of all operations necessary to prevent the offences specified in Article 2, and for ensuring that steps are taken to prosecute persons guilty of such offences.

2. This central office :

(a) Shall be in close contact with other official institutions or bodies dealing with narcotic drugs;

(b) Shall centralise all information of a nature to facilitate the investigation and prevention of the offences specified in Article 2;

(c) Shall be in close contact with and may correspond direct with the central offices of other countries.

3. Where the Government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and local Governments, the supervision and co-ordination specified in paragraph 1 and the execution of the functions specified in (a) and (b) of paragraph 2 shall be carried out in conformity with the constitutional or administrative system thereof.

4. Where the present Convention has been applied to any territory by virtue of Article 18, the requirements of the present Article may be carried out by means of a central office set up in or for that territory acting in conjunction, if necessary, with the central office in the metropolitan territory concerned.

5. The powers and the functions of the central office may be delegated to the special administration referred to in Article 15 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs of 1931.

*Article 12.*

1. The central office shall co-operate with the central offices of foreign countries to the greatest extent possible, in order to facilitate the prevention and punishment of the offences specified in Article 2.

2. The office shall, so far as it thinks expedient, communicate to the central office of any country which may be concerned :

(a) Particulars which would make it possible to carry out any investigations or operations relating to any transactions in progress or proposed;



- b) Les indications qu'il aura pu recueillir sur l'identité et le signalement des trafiquants, en vue de la surveillance de leurs déplacements;
- c) La découverte de fabriques clandestines de stupéfiants.

#### Article 13.

1. La transmission des commissions rogatoires relatives aux infractions visées à l'article 2 doit être effectuée, soit :

- a) De préférence par voie de communication directe entre les autorités compétentes de chaque pays, le cas échéant, par l'entremise des offices centraux;
- b) Par correspondance directe des ministres de la Justice des deux pays ou par l'envoi direct, par une autre autorité compétente du pays requérant, au ministre de la Justice du pays requis;
- c) Par l'entremise de l'agent diplomatique ou consulaire du pays requérant dans le pays requis. Les commissions rogatoires seront transmises par cet agent à l'autorité désignée par le pays requis.

2. Chaque Haute Partie contractante peut déclarer, par une communication adressée aux autres Hautes Parties contractantes, qu'elle entend que les commissions rogatoires à exécuter sur son territoire lui soient transmises par la voie diplomatique.

3. Dans le cas de l'alinéa c) du paragraphe 1, une copie de la commission rogatoire sera adressée en même temps par l'agent diplomatique ou consulaire du pays requérant au ministre des Affaires étrangères du pays requis.

4. A défaut d'entente contraire, la commission rogatoire doit être rédigée, soit dans la langue de l'autorité requise, soit dans la langue convenue entre les pays intéressés.

5. Chaque Haute Partie contractante fera connaître, par une communication adressée à chacune des autres Hautes Parties contractantes, celui ou ceux des modes de transmission susvisés qu'elle admet pour les commissions rogatoires de cette Haute Partie contractante.

6. Jusqu'au moment où une Haute Partie contractante fera une telle communication, sa procédure actuelle, en fait de commission rogatoire, sera maintenue.

7. L'exécution des commissions rogatoires ne pourra donner lieu au remboursement de taxes ou frais autres que les frais d'expertise.

8. Rien, dans le présent article, ne pourra être interprété comme constituant, de la part des Hautes Parties contractantes, un engagement d'admettre, en ce qui concerne le système des preuves en matière répressive, une dérogation à leur loi ou de donner suite à des commissions rogatoires autrement que dans les limites de leur loi.

#### Article 14.

La participation d'une Haute Partie contractante à la présente Convention ne doit pas être interprétée comme affectant son attitude sur la question générale de la compétence de la juridiction pénale comme question de droit international.

#### Article 15.

La présente Convention laisse intact le principe que les faits prévus aux articles 2 et 5 doivent, dans chaque pays, être qualifiés, poursuivis et jugés conformément aux règles générales de la législation nationale.

#### Article 16.

Les Hautes Parties contractantes se communiqueront, par l'entremise du Secrétaire général de la Société des Nations, les lois et règlements promulgués pour donner effet à la présente Convention, ainsi qu'un rapport annuel relatif au fonctionnement de la Convention sur leurs territoires.

#### Article 17.

S'il s'élève entre les Hautes Parties contractantes un différend quelconque relatif à l'interprétation ou à l'application de la présente Convention, et si ce différend n'a pu être résolu de façon satisfaisante par voie diplomatique, il sera réglé conformément aux dispositions en vigueur entre les Parties concernant le règlement des différends internationaux.

Au cas où de telles dispositions n'existeraient pas entre les Parties au différend, elles le soumettront à une procédure arbitrale ou judiciaire. A défaut d'un accord sur le choix d'un autre tribunal, elles soumettront le différend, à la requête de l'une d'elles, à la Cour permanente de Justice internationale, si elles sont toutes parties au Protocole du 16 décembre 1920, relatif au Statut de ladite Cour, et, si elles n'y sont pas toutes parties, à un tribunal d'arbitrage, constitué conformément à la Convention de La Haye du 18 octobre 1907, pour le règlement pacifique des conflits internationaux.

#### Article 18.

1. Toute Haute Partie contractante pourra déclarer, au moment de la signature, de la ratification ou de l'adhésion, qu'en acceptant la présente Convention, elle n'assume aucune obligation pour l'ensemble ou une partie de ses colonies, protectorats, territoires d'outre-mer ou territoires

- (b) Any particulars which it has been able to secure regarding the identity and the description of traffickers with a view to supervising their movements;
- (c) Discoveries of secret factories of narcotic drugs.

#### *Article 13.*

1. The transmission of letters of request relating to the offences referred to in Article 2 shall be effected :

(a) Preferably by direct communication between the competent authorities of each country or through the central offices, or

(b) By direct correspondence between the Ministers of Justice of the two countries or by direct communication from another competent authority of the country making the request to the Minister of Justice of the country to which the request is made, or

(c) Through the diplomatic or consular representative of the country making the request in the country to which the request is made. For this purpose, the letters of request shall be sent by such representative to the authority designated by the country to which the request is made.

2. Each High Contracting Party may, by communication to the other High Contracting Parties, express its desire that letters of request to be executed within its territory should be sent to it through the diplomatic channel.

3. In case (c) of paragraph 1, a copy of the letter of request shall at the same time be sent by the diplomatic or consular representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made.

4. Unless otherwise agreed, the letter of request shall be drawn up in the language of the authority to which request is made or in a language agreed upon by the two countries concerned.

5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method, or methods, of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.

6. Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.

7. The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.

8. Nothing in the present Article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws or to execute letters of request otherwise than within the limits of their laws.

#### *Article 14.*

The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that Party's attitude on the general question of criminal jurisdiction as a question of international law.

#### *Article 15.*

The present Convention does not affect the principle that the offences referred to in Articles 2 and 5 shall in each country be defined, prosecuted and punished in conformity with the general rules of its domestic law.

#### *Article 16.*

The High Contracting Parties shall communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and also an annual report on the working of the Convention in their territories.

#### *Article 17.*

If there should arise between the High Contracting Parties a dispute of any kind relating to the interpretation or application of the present Convention, and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements in force between the Parties providing for the settlement of international disputes.

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement. In the absence of agreement on the choice of another tribunal, the dispute shall, at the request of any one of the Parties, be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Statute of that Court, and, if any of the Parties to the dispute is not a Party to the Protocol of December 16th, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

#### *Article 18.*

1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligation in respect of

placés sous sa souveraineté ou sous son mandat, et la présente Convention ne s'appliquera pas aux territoires mentionnés dans cette déclaration.

2. Toute Haute Partie contractante pourra ultérieurement donner, à tout moment, avis au Secrétaire général de la Société des Nations qu'elle désire que la présente Convention s'applique à l'ensemble ou à une partie de ses territoires qui auront fait l'objet d'une déclaration aux termes de l'alinéa précédent, et la présente Convention s'appliquera à tous les territoires mentionnés dans l'avis quatre-vingt-dix jours après réception de cet avis par le Secrétaire général de la Société des Nations.

3. Chacune des Hautes Parties contractantes pourra déclarer à tout moment, après l'expiration de la période de cinq ans prévue par l'article 21, qu'elle désire que la présente Convention cesse de s'appliquer à l'ensemble ou à une partie de ses colonies, protectorats, territoires d'outre-mer ou territoires placés sous sa souveraineté ou sous son mandat, et la Convention cessera de s'appliquer aux territoires mentionnés dans cette déclaration, un an après réception de cette déclaration par le Secrétaire général de la Société des Nations.

4. Le Secrétaire général communiquera à tous les Membres de la Société, ainsi qu'aux Etats non membres mentionnés à l'article 19, toutes les déclarations et tous les avis reçus aux termes du présent article.

#### *Article 19.*

La présente Convention, dont les textes français et anglais feront également foi, portera la date de ce jour et sera, jusqu'au 31 décembre 1936, ouverte à la signature au nom de tout Membre de la Société des Nations ou de tout Etat non membre invité à la Conférence qui a élaboré la présente Convention, ou auquel le Conseil de la Société des Nations aura communiqué copie de la présente Convention à cet effet.

#### *Article 20.*

La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations, qui en notifiera le dépôt à tous les Membres de la Société, ainsi qu'aux Etats non membres visés à l'article précédent.

#### *Article 21.*

1. A partir du 1<sup>er</sup> janvier 1937, il pourra être adhéré à la présente Convention au nom de tout Membre de la Société des Nations ou de tout Etat non membre visé à l'article 19.

2. Les instruments d'adhésion seront transmis au Secrétaire général de la Société des Nations, qui en notifiera le dépôt à tous les Membres de la Société, ainsi qu'aux Etats non membres visés audit article.

#### *Article 22.*

La présente Convention entrera en vigueur quatre-vingt-dix jours après que le Secrétaire général de la Société des Nations aura reçu les ratifications ou les adhésions de dix Membres de la Société des Nations ou Etats non membres. Elle sera enregistrée à cette date par les soins du Secrétaire général de la Société des Nations.

#### *Article 23.*

Les ratifications ou adhésions déposées après le dépôt de la dixième ratification ou adhésion prendront effet à l'expiration d'un délai de quatre-vingt-dix jours à partir de la date de leur réception par le Secrétaire général de la Société des Nations.

#### *Article 24.*

1. A l'expiration d'un délai de cinq ans à partir de l'entrée en vigueur de la présente Convention, celle-ci pourra être dénoncée par un instrument écrit déposé auprès du Secrétaire général de la Société des Nations. La dénonciation sortira ses effets un an après la date à laquelle elle aura été reçue par le Secrétaire général de la Société des Nations; elle ne sera opérante que pour le Membre de la Société des Nations ou l'Etat non membre au nom duquel elle aura été déposée.

2. Le Secrétaire général notifiera à tous les Membres de la Société et aux Etats non membres mentionnés à l'article 19 les dénonciations ainsi reçues.

3. Si, par suite de dénonciations simultanées ou successives, le nombre des Membres de la Société des Nations et des Etats non membres qui sont liés par la présente Convention se trouve ramené à moins de dix, la Convention cessera d'être en vigueur à partir de la date à laquelle la dernière de ces dénonciations prendra effet, conformément aux dispositions du présent article.

#### *Article 25.*

Une demande de révision de la présente Convention pourra être formulée en tout temps par tout Membre de la Société des Nations ou Etat non membre lié par la Convention, par voie de notification adressée au Secrétaire général de la Société des Nations. Cette notification sera communiquée par le Secrétaire général à tous les autres Membres de la Société des Nations et Etats non membres ainsi liés, et, si elle est appuyée par un tiers au moins d'entre elles, les Hautes Parties contractantes s'engagent à se réunir en une conférence aux fins de révision de la Convention.

all or any of his colonies, protectorates and overseas territories under suzerainty or mandate, and the present Convention shall not apply to any territories named in such declaration.

2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he declares that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.

3. Any High Contracting Party may, at any time after the expiration of the period of five years mentioned in Article 21, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates and overseas territories or territories under suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. The Secretary-General shall communicate to all the Members of the League and to the non-member States mentioned in Article 19 all declarations and notices received in virtue of this Article.

#### *Article 19.*

The present Convention, of which the French and English texts shall both be equally authoritative, shall bear this day's date, and shall, until December 31st, 1936, be open for signature on behalf of any Member of the League of Nations, or of any non-member State which received an invitation to the Conference which drew up the present Convention, or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

#### *Article 20.*

The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League and to the non-member States referred to in the preceding Article.

#### *Article 21.*

1. As from January 1st, 1937, the present Convention shall be open to accession on behalf of any Member of the League of Nations or any non-member State mentioned in Article 19.

2. The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in that Article.

#### *Article 22.*

The present Convention shall come into force ninety days after the Secretary-General of the League of Nations has received the ratifications or accessions of ten Members of the League of Nations or non-member States. It shall be registered on that date by the Secretary-General of the League of Nations.

#### *Article 23.*

Ratifications or accessions received after the deposit of the tenth ratification or accession shall take effect as from the expiration of a period of ninety days from the date of their receipt by the Secretary-General of the League of Nations.

#### *Article 24.*

1. After the expiration of five years from the date of the coming into force of the present Convention, it may be denounced by an instrument in writing, deposited with the Secretary-General of the League of Nations. The denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations and shall operate only as regards the Member of the League or non-member State on whose behalf it has been deposited.

2. The Secretary-General shall notify all the Members of the League and the non-member States mentioned in Article 19 of any denunciations received.

3. If, as a result of simultaneous or successive denunciations, the number of Members of the League and non-member States bound by the present Convention is reduced to less than ten, the Convention shall cease to be in force as from the date on which the last of such denunciations shall take effect in accordance with the provisions of this Article.

#### *Article 25.*

A request for the revision of the present Convention may at any time be made by any Member of the League of Nations or non-member State bound by this Convention by means of a notice addressed to the Secretary-General of the League of Nations. Such notice shall be communicated by the Secretary-General to the other Members of the League of Nations or non-member States bound by this Convention, and, if endorsed by not less than one-third of them, the High Contracting Parties agree to meet for the purpose of revising the Convention.

EN FOI DE QUOI les pléipotentiaires sus-  
mentionnés ont signé la présente Convention.

FAIT à Genève, le vingt-six juiu mil neuf cent  
trente-six, en un seul exemplaire, qui sera  
déposé dans les archives du Seerétariat de la  
Société des Nations et dont les copies certifiées  
conformes seront remises à tous les Membres  
de la Société des Nations et aux États non  
membres mentionnés à l'article 19.

IN FAITH WHEREOF the above-mentioned  
Plenipotentiaries have signed the present  
Convention.

DONE at Geneva, the twenty-sixth day of  
June, one thonsand nine hundred and thirty-  
six, in a single copy, which shall remain  
deposited in the archives of the Secretariat of  
the League of Nations and certified true copies  
of which shall be delivered to all the Members  
of the League and to the non-member States  
referred to in Article 19.

AUTRICHE

AUSTRIA

R. PRÜGL,  
Dr BRUNO SCHULTZ

ÉTATS-UNIS DU BRÉSIL

UNITED STATES OF BRAZIL

Jorge LATOUR  
*ad referendum*

GRANDE-BRETAGNE  
ET IRLANDE DU NORD

ainsi que toutes parties de l'Empire  
britannique non membres séparés  
de la Société des Nations.

GREAT BRITAIN  
AND NORTHERN IRELAND

and all parts of the British Empire  
which are not separate Members of  
the League of Nations.

Oscar F. DOWSON  
Wm. H. COLES

CANADA

CANADA

C. H. L. SHARMAN

INDE

INDIA

G. HARDY

BULGARIE

BULGARIA

N. MONTCHIOFF

CHINE

CHINA

Hoo Chi-Tsai.

CUBA

CUBA

G. DE BLANCK

DANEMARK

DENMARK

William BORBERG

ÉGYPTE

EGYPT

Edgar GORRA

ÉQUATEUR

ECUADOR

Alex GASTELÚ

ESPAGNE

SPAIN

Julio CASARES

FRANCE	P. DE REFFYE G. BOURGOIS	FRANCE
GRÈCE	Raoul BIBICA-ROSETTI A. CONTOUMAS	GREECE
JAPON	Massa-aki HOTTA	JAPAN
MEXIQUE	Manuel TELLO	MEXICO
PANAMA	<i>ad referendum</i> : D <sup>r</sup> Ernesto HOFFMANN	PANAMA
PAYS-BAS	DELGORGE G. BEELAERTS VAN BLOKLAND	THE NETHERLANDS
POLOGNE	CHODŹKO	POLAND
PORTUGAL	Augusto DE VASCONCELLOS José CAETRO DA MATTA	PORTUGAL
ROUMANIE	C. ANTONIADE	ROUMANIA
SUISSE	C. GORGÉ	SWITZERLAND
TCHÉCOSLOVAQUIE	D <sup>r</sup> Antonín KOUKAL	CZECHOSLOVAKIA
UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES	G. LACHKEVITCH	UNION OF SOVIET SOCIALIST REPUBLICS
URUGUAY	V. BENAVIDES	URUGUAY
VENEZUELA	<i>ad referendum</i> : AROCHA	VENEZUELA

Copie certifiée conforme.  
Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*

Certified true copy.  
For the Secretary-General :

*Legal Adviser  
of the Secretariat.*

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ANNEXE 7.

Série de publications : 1936.XI.12.

N° officiel : C.286(a).M.174(a). 1936. XI.

Genève, le 22 juillet 1936.-

TEXTE DU PROTOCOLE DE SIGNATURE  
SIGNÉ LE 26 JUIN 1936.

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PROTOCOLE DE SIGNATURE.

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En signant la Convention de 1936 pour la répression du trafic illicite des drogues nuisibles en date de ce jour, les Plénipotentiaires soussignés déclarent, au nom de leurs gouvernements, accepter :

1. Que la Chine subordonne son acceptation de la Convention à la réserve ci-après, concernant l'article 9 :

« Tant que la juridiction consulaire dont jouissent encore les ressortissants de certaines Puissances en Chine ne sera pas abolie, le Gouvernement chinois ne peut pas assumer les obligations découlant de l'article 9, qui contient l'engagement général pour les Parties contractantes d'accorder l'extradition d'étrangers ayant commis les faits visés à cet article. »

2. Que les Pays-Bas subordonnent leur acceptation de la Convention à la réserve que, selon les principes fondamentaux de leur droit pénal, ils ne pourront se conformer au sous-paragraphe c) de l'article 2 que dans les cas où il y aura commencement d'exécution.

3. Que l'Inde subordonne son acceptation de la Convention à la réserve que ladite Convention ne s'applique pas aux États de l'Inde, ni aux États Chans (qui font partie de l'Inde britannique).



ANNEX 7.

*Series of Publications* : 1936.XI.12.

*Official No.* : C.286(a).M.174(a).1936.XI.

Geneva, July 22nd, 1936.

TEXT OF THE PROTOCOL OF SIGNATURE,  
SIGNED ON JUNE 26TH, 1936.

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PROTOCOL OF SIGNATURE.

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When signing the Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs dated this day, the undersigned Plenipotentiaries, in the name of their Governments, declare to have agreed :

1. To China making acceptance of the Convention subject to the following reservation as to Article 9 :

“ So long as the consular jurisdiction still enjoyed by the nationals of certain Powers in China is not abolished, the Chinese Government is unable to assume the obligations resulting from Article 9, involving a general undertaking by the Contracting Parties to grant the extradition of foreigners guilty of the offences referred to in that Article.”

2. That the Netherlands make their acceptance of the Convention subject to the reservation that, according to the basic principles of penal law in the Netherlands, they are able to comply with sub-paragraph (c) of Article 2 only in circumstances where there is a commencement of execution.

3. That India makes its acceptance of the Convention subject to the reservation that the said Convention does not apply to the Indian States or to the Shan States (which are part of British India).

EN FOI DE QUOI les soussignés ont apposé leur signature au bas du présent Protocole.

IN FAITH WHEREOF the undersigned have affixed their signatures to the present Protocol.

FAIT à Genève, le vingt-six juin mil neuf cent trente-six, en un seul exemplaire, qui sera déposé dans les archives du Secrétariat de la Société des Nations et dont les copies certifiées conformes seront remises à tous les Membres de la Société des Nations et aux États non membres mentionnés à l'article 19 de la Convention.

DONE at Geneva, the twenty-sixth day of June, one thousand nine hundred and thirty-six, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations and certified true copies of which shall be delivered to all the Members of the League of Nations and to the non-member States referred to in Article 19 of the Convention.

AUTRICHE

AUSTRIA

R. PRÜGL  
Dr Bruno SCHWITZ

ÉTATS-UNIS DU BRÉSIL

UNITED STATES OF BRAZIL

Jorge LATOUR  
*ad referendum*

GRANDE-BRETAGNE  
ET IRLANDE DU NORD

GREAT BRITAIN  
AND NORTHERN IRELAND

ainsi que toutes parties de l'Empire  
britannique non membres séparés  
de la Société des Nations.

and all parts of the British Empire  
which are not separate Members of  
the League of Nations.

Oscar F. DOWSON  
Wm. H. COLES

CANADA

CANADA

C. H. L. SHARMAN

INDE

INDIA

G. HARDY

BULGARIE

BULGARIA

N. MONTCHILOFF

CHINE

CHINA

Hoo Chi-Tsai

CUBA

CUBA

G. de BLANCK

DANEMARK

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ÉQUATEUR

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A. CONTOUMAS

GREECE

JAPON

Massa-aki HOTTA

JAPAN

MEXIQUE

Manuel TELLO

MEXICO

PANAMA

*ad referendum* : Dr Ernesto HOFFMANN

PANAMA

PAYS-BAS

DELGORGE  
G. BEELAERTS VAN BLOKLAND

THE NETHERLANDS

POLOGNE

CHODŹKO

POLAND

PORTUGAL

Augusto DE VASCONCELLOS  
José CAEIRO DA MATTA

PORTUGAL

ROUMANIE

C. ANTONIADE

ROUMANIA

SUISSE

C. GORGÉ

SWITZERLAND

TCHÉCOSLOVAQUIE

Dr Antonín KOUKAL

CZECHOSLOVAKIA

UNION DES RÉPUBLIQUES  
SOVIÉTIQUES SOCIALISTES

G. LACHKEVITCH

UNION OF SOVIET  
SOCIALIST REPUBLICS

URUGUAY

V. BENAVIDES

URUGUAY

VENEZUELA

*ad referendum* : AROCHA

VENEZUELA

Copie certifiée conforme.  
Pour le Secrétaire général :

Certified true copy.  
For the Secretary-General :

*Conseiller juridique  
du Secrétariat.*

*Legal Adviser  
of the Secretariat.*

ANNEXE 8.

Série de publications : 1936.XI.13.

N° officiel : C.286(b).M.174(b). 1936. XI.

Genève, le 22 juillet 1936.

TEXTE DE L'ACTE FINAL, SIGNÉ LE 26 JUIN 1936.

ACTE FINAL,

Les GOUVERNEMENTS DE L'AFGHANISTAN, DES ETATS-UNIS D'AMÉRIQUE, DE L'AUTRICHE, DES ETATS-UNIS DU BRÉSIL, DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD, DE LA BULGARIE, DU CANADA, DU CHILI, DE LA CHINE, DE CUBA, DU DANEMARK, DE L'ÉGYPTÉ, DE L'ÉQUATEUR, DE L'ESPAGNE, DE LA FRANCE, DE LA GRÈCE, DU HONDURAS, DE LA HONGRIE, DE L'INDE, DE L'IRAK, DE L'ÉTAT LIBRE D'IRLANDE, DU JAPON, DU LIECHTENSTEIN, DES ETATS-UNIS DU MEXIQUE, DU NICARAGUA, DE LA NORVÈGE, DU PANAMA, DES PAYS-BAS, DU PÉROU, DE LA POLOGNE, DU PORTUGAL, DE LA ROUMANIE, DU SIAM, DE LA SUISSE, DE LA TCHÉCOSLOVAQUIE, DE LA TURQUIE, DE L'UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES, DE L'URUGUAY, DES ETATS-UNIS DU VENEZUELA ET DE LA YOUGOSLAVIE,

Ayant accepté l'invitation qui leur a été adressée en exécution de la résolution du Conseil de la Société des Nations, en date du 20 janvier 1936, en vue de la conclusion d'une Convention pour la répression du trafic illicite des drogues nuisibles,

Ont désigné les délégués ci-après :

AFGHANISTAN

Délégué :

Son Excellence le général MOHAMED OMER Khan, Délégué à l'Assemblée de la Société des Nations, Délégué permanent suppléant près la Société des Nations.

ÉTATS-UNIS D'AMÉRIQUE

Délégués :

M. Stuart J. FULLER, Assistant-Chef à la Division des Affaires d'Extrême-Orient, Département d'Etat, Représentant des Etats-Unis d'Amérique à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

M. Harry J. ANSLINGER, Commissaire aux stupéfiants au Ministère des Finances.

Conseiller juridique :

M. Frank X. WARD, Conseiller juridique adjoint du Département d'Etat.

AUTRICHE

Délégués :

Son Excellence M. Emerich FRLÜGL, Représentant permanent près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire.

Le Dr Bruno SCHULTZ, ancien Vice-Président de la Police de Vienne, représentant de l'Autriche à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

## ANNEX 8.

*Series of Publications* : 1936.XI.13.

*Official No.* : C.286(b).M.174(b).1936.XI.

Geneva, July 22nd, 1936.

### TEXT OF THE FINAL ACT, SIGNED ON JUNE 26TH, 1936.

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#### FINAL ACT.

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THE GOVERNMENTS OF AFGHANISTAN, THE UNITED STATES OF AMERICA, AUSTRIA, THE UNITED STATES OF BRAZIL, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, BULGARIA, CANADA, CHILE, CHINA, CUBA, DENMARK, EGYPT, ECUADOR, SPAIN, FRANCE, GREECE, HONDURAS, HUNGARY, INDIA, IRAQ, THE IRISH FREE STATE, JAPAN, LIECHTENSTEIN, THE UNITED STATES OF MEXICO, NICARAGUA, NORWAY, PANAMA, THE NETHERLANDS, PERU, POLAND, PORTUGAL, ROUMANIA, SIAM, SWITZERLAND, CZECHOSLOVAKIA, TURKEY, THE UNION OF SOVIET SOCIALIST REPUBLICS, URUGUAY, THE UNITED STATES OF VENEZUELA, AND YUGOSLAVIA,

Having accepted the invitation extended to them in execution of a resolution adopted by the Council of the League of Nations on January 20th, 1936, for the purpose of concluding a Convention for the Suppression of the Illicit Traffic in Dangerous Drugs,

Have appointed the following delegates :

#### AFGHANISTAN

##### *Delegate :*

His Excellency General MOHAMED OMER Khan, Delegate to the Assembly of the League of Nations, Deputy Permanent Delegate to the League of Nations.

#### UNITED STATES OF AMERICA

##### *Delegates :*

Mr. Stuart J. FULLER, Assistant Chief of the Division of Far Eastern Affairs, Department of State, Representative of the United States of America on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

Mr. Harry J. ANSLINGER, Commissioner of Narcotics of the Treasury Department.

##### *Legal Adviser :*

Mr. Frank X. WARD, Assistant Legal Adviser of the Department of State.

#### AUSTRIA

##### *Delegates :*

His Excellency M. Emerich FRLÜGL, Permanent Representative to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

Dr. Bruno SCHULTZ, former Vice-President of the Vienna Police, Representative of Austria on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## ÉTATS-UNIS DU BRÉSIL

*Délégué :*

M. Jorge LATOUR, Secrétaire de légation.

## ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD

ainsi que toutes parties de l'Empire britannique  
non membres séparés de la Société des Nations.

*Délégués :*

M. Osear Follett DOWSON, C.B.E., Conseiller juridique au Ministère de l'Intérieur.

Le major William Hewett COLES, D.S.O., Représentant du Royaume-Uni à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

## BULGARIE

*Délégués :*

Son Excellence M. Nicolas MONTCHILOFF, Délégué permanent près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire.

M. Eugène SILIANOFF, Secrétaire de la Délégation permanente près la Société des Nations et Secrétaire de la Légation à Berne.

## CANADA

*Délégué :*

Le colonel C. H. L. SHARMAN, C.M.G., C.B.E., Chef de la Division des narcotiques au Département des Pensions et de la Santé publique et Représentant du Canada à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

*Secrétaire :*

M. Alfred RIVE.

## CHILI

*Délégué :*

M. Francisco HERNANDEZ JIMENEZ, Chef de la Section des aliments et drogues au Ministère de la Santé publique.

## CHINE

*Délégué :*

Son Excellence le Dr HOO Chi-Tsai, Directeur du Bureau permanent de la Délégation près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire près le Conseil fédéral suisse.

*Délégué suppléant :*

M. CHEN Ting, Premier Secrétaire du Bureau permanent de la Délégation près la Société des Nations.

*Secrétaire :*

M. Yone Ming LEE, Secrétaire de la Légation à Berne.

## CUBA

*Délégué :*

Son Excellence M. Guillermo de BLANCK, Délégué permanent près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire près le Conseil fédéral suisse.

## DANEMARK

*Délégué :*

Son Excellence M. William BORBERG, Délégué permanent près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire.

*Délégué suppléant :*

M. Holger Oluf Quistgaard BECH, Premier Secrétaire de la Délégation permanente près la Société des Nations.

UNITED STATES OF BRAZIL,

*Delegate :*

M. Jorge LATOUR, Secretary of Legation.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

and all parts of the British Empire which are  
not separate Members of the League of Nations.

*Delegates :*

Mr. Oscar Follett DOWSON, C.B.E., Legal Adviser to the Home Office.

Major William Hewett COLES, D.S.O., Representative of the United Kingdom on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

BULGARIA

*Delegates :*

His Excellency M. Nicolas MOMTCHILOFF, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

M. Eugène SILIANOFF, Secretary of the Permanent Delegation to the League of Nations and Secretary of the Legation in Berne.

CANADA

*Delegate :*

Colonel C. H. L. SHARMAN, C.M.G., C.B.E., Chief of the Narcotic Division of the Department of Pensions and National Health and Representative of Canada on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

*Secretary :*

Mr. Alfred RIVE.

CHILE

*Delegate :*

M. Francisco HERNANDEZ JIMENEZ, Head of the Nutrition and Drugs Section of the Ministry of Health.

CHINA

*Delegate :*

His Excellency Dr. Hoo Chi-Tsai, Director of the Permanent Office of the Delegation to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

*Substitute :*

M. CHEN Ting, First Secretary of the Permanent Office of the Delegation to the League of Nations.

*Secretary :*

M. Yone Ming LEE, Secretary of the Legation in Berne.

CUBA

*Delegate :*

His Excellency M. Guillermo de BLANCK, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

DENMARK

*Delegate :*

His Excellency M. William BORBERG, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

*Substitute :*

M. Holger Oluf Quistgaard BECH, First Secretary of the Permanent Delegation to the League of Nations.



## ÉGYPTE

*Délégué :*

M. Edgar GORRA, Conseiller royal, Directeur du contentieux de l'Etat, à Alexandrie.

## ÉQUATEUR

*Délégué :*

M. Alejandro GASTELÚ CONCHA, Secrétaire de la Délégation permanente près la Société des Nations, Consul général de l'Equateur à Genève.

## ESPAGNE

*Délégué :*

M. Julio CASARES, Représentant de l'Espagne à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

*Conseiller juridique :*

M. Manuel LOPEZ REY, Professeur de droit pénal.

## FRANCE

*Délégué :*

Son Excellence M. DE REFFYE, Ministre plénipotentiaire, Sous-Directeur du contentieux et des chancelleries au Ministère des Affaires étrangères.

*Délégué suppléant :*

M. Gaston BOURGOIS, Consul général de France.

## GRÈCE

*Délégué :*

Son Excellence M. Raoul BIBICA-ROSETTI, Délégué permanent près la Société des Nations, Ministre plénipotentiaire.

*Délégué suppléant :*

M. Alexandre CONTOMAS, Premier Secrétaire de la Délégation permanente près la Société des Nations.

## HONDURAS

*Délégué :*

Son Excellence le Dr Julian LÓPEZ PINEDA, Délégué permanent près la Société des Nations, Chargé d'Affaires à Paris.

## HONGRIE

*Délégué :*

Son Excellence M. László DE VELICS, Chef de la Délégation près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire près le Conseil fédéral suisse.

*Délégué suppléant :*

M. László BARTOK, Premier Secrétaire de légation à la Délégation permanente près la Société des Nations.

## INDE

*Délégué :*

M. Gordon Sidney HARDY, C.I.E., I.C.S., Vice-Président de la Commission consultative du trafic de l'opium et autres drogues nuisibles.

## IRAK

*Délégué :*

Sahib Bey NAJIB, Chef de la Délégation permanente près la Société des Nations, Conseiller de légation.

## EGYPT

*Delegate :*

M. Edgar GORRA, Royal Adviser, " Directeur du contentieux de l'Etat ", Alexandria.

## ECUADOR

*Delegate :*

M. Alejandro GASTELÚ CONCHA, Secretary of the Permanent Delegation to the League of Nations, Consul-General of Ecuador in Geneva.

## SPAIN

*Delegate :*

M. Julio CASARES, Representative of Spain on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

*Legal Adviser :*

M. Manuel LOPEZ REY, Professor of Penal Law.

## FRANCE

*Delegate :*

His Excellency M. DE REFFYE, Minister Plenipotentiary, " Sous-Directeur du contentieux et des chancelleries " at the Ministry of Foreign Affairs.

*Substitute :*

M. Gaston BOURGOIS, Consul-General of France.

## GREECE

*Delegate :*

His Excellency M. Raoul BIBICA-ROSETTI, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

*Substitute :*

M. Alexandre CONTOUMAS, First Secretary of the Permanent Delegation to the League of Nations.

## HONDURAS

*Delegate :*

His Excellency Dr. Julian LÓPEZ PINEDA, Permanent Delegate to the League of Nations, Chargé d'Affaires in Paris.

## HUNGARY

*Delegate :*

His Excellency M. László DE VELICS, Chief of the Delegation to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

*Substitute :*

M. László BARTOK, First Secretary of Legation at the Permanent Delegation to the League of Nations.

## INDIA

*Delegate :*

Gordon Sidney HARDY, Esq., C.I.E., I.C.S., Vice-Chairman of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## IRAQ

*Delegate :*

Sahib Bey NAJIB, Head of the Permanent Delegation to the League of Nations, Counsellor of Legation.

## ÉTAT LIBRE D'IRLANDE

### *Délégué :*

M. François Thomas CREMINS, Délégué permanent près la Société des Nations.

## JAPON

### *Délégué :*

Son Excellence M. Massa-aki HOTTA, Envoyé extraordinaire et Ministre plénipotentiaire près le Conseil fédéral suisse.

### *Experts :*

M. Unji KONNO, Expert technique au Laboratoire d'hygiène de Tokio.

M. Morikatsu INAGAKI, Expert attaché au Ministère des Affaires étrangères.

### *Secrétaires :*

M. Yoshiro SUGITA, Secrétaire au Ministère des Affaires d'outre-mer.

M. Bushichiro OTAKE, Secrétaire au Ministère de la Justice.

M. Kumao NISHIMURA, Deuxième Secrétaire à l'Ambassade à Paris.

## LIECHTENSTEIN

### *Délégué :*

M. Camille GORGÉ, Conseiller de légation, Chef de la Section de la Société des Nations au Département politique fédéral suisse, Berne.

### *Expert :*

M. E. SCHEIM, Adjoint à la Division de la Police, Département fédéral suisse de Justice et Police.

## ÉTATS-UNIS DU MEXIQUE

### *Délégué :*

M. Manuel TELLO, Premier Secrétaire du Service extérieur mexicain, Représentant du Mexique à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

## NICARAGUA

### *Délégué :*

Son Excellence M. Francisco Tomás MEDINA, Délégué permanent près la Société des Nations, Ministre plénipotentiaire.

## NORVÈGE

### *Délégué :*

M. Einar MASENG, Délégué permanent près la Société des Nations.

## PANAMA

### *Délégué :*

Le Dr Ernesto HOFFMANN, Délégué permanent près la Société des Nations.

## PAYS-BAS

### *Délégués :*

M. J. H. DELGORGE, Conseiller du Gouvernement des Pays-Bas pour les questions internationales en matière d'opium et Représentant des Pays-Bas à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

Le Dr J. R. M. VAN ANGEREN, Directeur, Chef de la Section de la Police au Ministère de la Justice.

### *Délégué suppléant et Secrétaire :*

Le Jonkheer G. BEELAERTS VAN BLOKLAND, Rédacteur adjoint au Ministère des Affaires étrangères.

## IRISH FREE STATE

### *Delegate :*

Mr. Francis Thomas CREMINS, Permanent Delegate to the League of Nations.

## JAPAN

### *Delegate :*

His Excellency Massa-aki HOTTA, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

### *Experts :*

M. Unji KONNO, Technical Expert of the Tokio Hygienic Laboratory.

M. Morikatsu INAGAKI, Expert attached to the Foreign Office.

### *Secretaries :*

M. Yoshiro SUGITA, Secretary of the Department of Overseas Affairs.

M. Bushichiro OTAKE, Secretary of the Department of Justice.

M. Kumao NISHIMURA, Second Secretary of the Embassy in Paris.

## LIECHTENSTEIN

### *Delegate :*

M. Camille GORGÈ, Counsellor of Legation, Chief of the League of Nations Section of the Swiss Federal Political Department.

### *Expert :*

M. E. SCHEIM, Assistant to the Police Division, Swiss Federal Department of Justice and Police.

## UNITED STATES OF MEXICO

### *Delegate :*

M. Manuel TELLO, First Secretary of the Mexican Foreign Service, Representative of Mexico on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## NICARAGUA

### *Delegate :*

His Excellency M. Francisco Tomás MEDINA, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

## NORWAY

### *Delegate :*

M. Einar MASENG, Permanent Delegate to the League of Nations.

## PANAMA

### *Delegate :*

Dr. Ernesto HOFFMANN, Permanent Delegate to the League of Nations.

## THE NETHERLANDS

### *Delegates :*

M. J. H. DELGORGÉ, Adviser of the Government of the Netherlands on international opium questions and Netherlands Representative on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

Dr. J. R. M. VAN ANGEREN, Director, Chief of the Police Section at the Ministry of Justice.

### *Substitute and Secretary :*

Jonkheer G. BEELAERTS VAN BLOKLAND, Assistant Editor to the Ministry of Foreign Affairs.

## PÉROU

*Délégué :*

M. Enrique TRUJILLO BRAVO, Ingénieur.

## POLOGNE

*Délégué :*

Son Excellence le Dr Witold CHODŹKO, ancien Ministre de la Santé publique, Président de la Commission consultative du trafic de l'opium et autres drogues nuisibles.

*Conseiller technique :*

M. Kazimierz TREBICKI, Premier Secrétaire à la Délégation près la Société des Nations.

## PORTUGAL

*Délégués :*

Son Excellence le Dr Augusto DE VASCONCELLOS, Délégué permanent près la Société des Nations, Ministre plénipotentiaire.

Son Excellence le professeur docteur José CAEIRO DA MATTA, Recteur de l'Université de Lisbonne.

*Secrétaire :*

M. Henrique DA GUERRA QUARESMA VIANNA, Chargé d'Affaires près la Société des Nations, Conseiller de légation.

## ROUMANIE

*Délégué :*

Son Excellence M. Constantin ANTONIADE, Envoyé extraordinaire et Ministre plénipotentiaire près la Société des Nations.

*Délégué suppléant :*

M. Dino CANTEMIR, Secrétaire de la Délégation près la Société des Nations.

## SIAM

*Délégué :*

Son Excellence Phya RAJAWANGSAN, Délégué permanent près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire près la Cour de Saint-James.

*Délégué suppléant :*

Luang BHADRAVADI, Secrétaire de légation à la Légation à Londres.

*Secrétaire :*

Luang CHAMNONG-DITHAKAR, Secrétaire de légation à la Légation à Londres.

## SUISSE

*Délégué :*

M. Camille GORGÉ, Conseiller de légation, Chef de la Section de la Société des Nations au Département politique fédéral.

*Expert :*

M. R. SCHREIB, Adjoint à la Division de la Police, Département fédéral de Justice et Police.

## PERU

### *Delegate :*

M. Enrique TRUJILLO BRAVO, Engineer.

## POLAND

### *Delegate :*

His Excellency Dr. Witold CHODŹKO, former Minister of Public Health, Chairman of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

### *Technical Adviser :*

M. Kasimierz TREBICKI, First Secretary at the Delegation to the League of Nations.

## PORTUGAL

### *Delegates :*

His Excellency Dr. Augusto DE VASCONCELLOS, Permanent Delegate to the League of Nations, Minister Plenipotentiary.

His Excellency Professor José CAETRO DA MATTA, Rector of the University of Lisbon.

### *Secretary :*

M. Henrique DA GUERRA QUARESMA VIANNA, Chargé d'Affaires to the League of Nations, Counsellor of Legation.

## ROUMANIA

### *Delegate :*

His Excellency M. Constantin ANTONIADE, Envoy Extraordinary and Minister Plenipotentiary to the League of Nations.

### *Substitute :*

M. Dino CANTEMIR, Secretary of the Delegation to the League of Nations.

## SIAM

### *Delegate :*

His Excellency Phya RAJAWANGSAN, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James.

### *Substitute :*

Luang BHADRAVADI, Secretary of Legation at the Legation in London.

### *Secretary :*

Luang CHAMNONG-DITHAKAR, Secretary of Legation at the Legation in London.

## SWITZERLAND

### *Delegate :*

M. Camille GORGÉ, Counsellor of Legation, Chief of the League of Nations Section at the Federal Political Department.

### *Expert :*

M. F. SCHEIM, Assistant to the Police Division, Federal Department of Justice and Police.

## TCHÉCOSLOVAQUIE

*Délégué :*

Le Dr Antonín KOUKAL, Conseiller au Ministère de la Justice.

## TURQUIE

*Délégué :*

M. Numan Tahir SEYMEN, Consul général à Genève.

## UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES

*Délégué :*

M. Georges LACHKEVITCH, Conseiller juridique au Commissariat du Peuple pour les Affaires étrangères.

## URUGUAY

*Délégués :*

Son Excellence M. Victor BENAVIDES, Envoyé extraordinaire et Ministre plénipotentiaire près le Conseil fédéral suisse.

Son Excellence le Dr Alfredo DE CASTRO, Envoyé extraordinaire et Ministre plénipotentiaire près Sa Majesté le Roi des Belges et près Sa Majesté la Reine des Pays-Bas, Représentant de l'Uruguay à la Commission consultative du trafic de l'opium et autres drogues nuisibles.

## ÉTATS-UNIS DU VENEZUELA

*Délégué :*

Son Excellence M. Manuel AROCHA, Délégué permanent près la Société des Nations, Envoyé extraordinaire et Ministre plénipotentiaire.

## YOUGOSLAVIE

*Délégué :*

Son Excellence le Dr Ivan SOMBORITCH, Délégué permanent près la Société des Nations.

*Experts :*

M. Bočko DJORDJEVITCH, Secrétaire au Ministère royal du Commerce et de l'Industrie.

Le Dr Vladimir MANOJLOVITCH, Secrétaire de la Délégation permanente près la Société des Nations.

*Participants à la Conférence à titre d'observateurs :*

## FINLANDE

M. Helge VON KNORRING, Premier Secrétaire de légation.

## LETTONIE

M. Kārlis KALNIŅŠ, Premier Secrétaire de légation.

*Participants à la Conférence à titre consultatif et en qualité d'experts :*

*Commission internationale de police criminelle :*

M. Norman KENDAL, C.B.E., Commissaire adjoint à la « Metropolitan Police » à Londres.

Le Dr Bruno SCHULTZ, ancien vice-président de la Police de Vienne, Représentant de l'Autriche à la Commission consultative du trafic de l'opium et autres drogues nuisibles, qui se sont réunis à Genève.



## CZECHOSLOVAKIA

*Delegate :*

Dr. Antonín KOUKAL, Adviser at the Ministry of Justice.

## TURKEY

*Delegate :*

M. Numan Tahir SEYMEN, Consul-General at Geneva.

## UNION OF SOVIET SOCIALIST REPUBLICS

*Delegate :*

M. Georges LACHKEVITCH, Legal Adviser at the People's Commissariat for Foreign Affairs.

## URUGUAY

*Delegates :*

His Excellency M. Victor BENAVIDES, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

His Excellency Dr. Alfredo DE CASTRO, Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians and to Her Majesty the Queen of the Netherlands, Representative of Uruguay on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

## UNITED STATES OF VENEZUELA

*Delegate :*

His Excellency M. Manuel AROCHA, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

## YUGOSLAVIA

*Delegate :*

His Excellency Dr. Ivan SOUBBOTICH, Permanent Delegate to the League of Nations.

*Experts :*

M. Boško DJORDJEVICH, Secretary to the Royal Ministry of Trade and Industry.

Dr. Vladimir MANOJLOVICH, Secretary of the Permanent Delegation to the League of Nations.

*Participating at the Conference as Observers :*

## FINLAND

M. Helge VON KNORRING, First Secretary of Legation.

## LATVIA

M. Kārlis KALNINŠ, First Secretary of Legation.

*Participating at the Conference in an Advisory Capacity and as Experts :*

### *International Criminal Police Commission :*

Mr. Norman KENDAL, C.B.E., Assistant Commissioner of the Metropolitan Police, London.

Dr. Bruno SCHULTZ, former Vice-President of the Vienna Police, Representative of Austria on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

who accordingly assembled at Geneva.

Le Conseil de la Société des Nations a appelé aux fonctions de président de la Conférence :  
M. Joseph LIMBURG, Membre du Conseil d'État des Pays-Bas.

La Conférence a désigné comme son vice-président :

M. DE RIFFY, Ministre plénipotentiaire, Sous-Directeur du contentieux et des chancelleries au Ministère des Affaires étrangères de la République française.

A rempli les fonctions de Secrétaire général de la Conférence :

M. Eric Einar EKSTRAND, Directeur des Sections du trafic de l'opium et des questions sociales, représentant le Secrétaire général de la Société des Nations.

A la suite des réunions tenues du 8 au 26 juin 1936, les Actes ci-après ont été arrêtés :

## I. CONVENTION DE 1936 POUR LA RÉPRESSION DU TRAFIC ILICITE DES DROGUES NUISIBLES.

### II. PROTOCOLE DE SIGNATURE DE LA CONVENTION.

La Conférence a également adopté ce qui suit :

#### I. INTERPRÉTATIONS.

1. Il est entendu que les stipulations de la Convention, et en particulier les stipulations des articles 2 et 5 ne s'appliquent pas aux faits connus non intentionnellement.

2. L'article 15 doit être interprété dans ce sens que la Convention ne porte, notamment, aucune atteinte à la liberté des Hautes Parties contractantes de régler le régime des circonstances atténuantes.

#### II. RECOMMANDATIONS.

##### 1. La Conférence,

Rappelant que la Conférence internationale de l'opium de 1912, résolue à poursuivre la suppression progressive de l'abus de l'opium, a inséré dans la Convention internationale de l'opium de 1912 l'article 6 suivant : « Les Puissances contractantes prendront des mesures pour la suppression graduelle et efficace de la fabrication, du commerce intérieur et de l'usage de l'opium préparé dans la limite des conditions différentes propres à chaque pays, à moins que des mesures existantes n'aient déjà réglé la matière »;

Rappelant que les Parties à l'Accord de Genève sur l'opium de 1925 ont déclaré, dans le Préambule, qu'elles étaient fermement résolues à effectuer la suppression graduelle et efficace de la fabrication, du commerce intérieur et de l'usage de l'opium préparé, telle qu'elle est prévue par le Chapitre II de la Convention internationale de l'opium de 1912, dans leurs possessions et territoires d'Extrême-Orient, y compris les territoires cédés à bail ou protégés, dans lesquels l'usage de l'opium préparé est encore autorisé, et qu'elles étaient désireuses, pour des raisons d'humanité et en vue d'assurer le bien-être social et moral des peuples intéressés, de prendre toutes mesures utiles pour réaliser dans le délai le plus bref possible la suppression de l'usage de l'opium à fumer;

Désireuse de profiter de l'occasion qui lui est offerte par la présente Conférence d'adresser aux États intéressés un appel les invitant à poursuivre leurs efforts dans ce domaine :

Recommande que les gouvernements qui permettent encore l'usage de l'opium pour d'autres fins que des fins médicales ou scientifiques, adoptent dans le plus bref délai toutes mesures efficaces en vue de l'abolition de cet usage de l'opium.

2. La Conférence recommande que les pays qui admettent le principe de l'extradition de leurs nationaux accordent l'extradition de leurs nationaux qui se trouvent sur leur territoire et qui se sont rendus coupables à l'étranger des infractions prévues par l'article 2, même si le traité d'extradition applicable contient une réserve au sujet de l'extradition des nationaux.

3. La Conférence recommande aux Hautes Parties contractantes de créer, le cas échéant, un service spécialisé de police aux fins de la présente Convention.

4. La Conférence recommande que la Commission consultative du trafic de l'opium et autres drogues nuisibles examine l'opportunité de réunions des représentants des offices centraux des Hautes Parties contractantes en vue d'assurer, perfectionner et développer la collaboration internationale prévue par la présente Convention; et, le cas échéant, donne un avis à ce sujet au Conseil de la Société des Nations.

The Council of the League of Nations appointed as President of the Conference :

M. Joseph LIMBURG, Member of the Council of States of the Netherlands.

The Conference has appointed as Vice-President :

M. DE REFFYE, Minister Plenipotentiary, " Sous-Directeur du contentieux et des chancelleries " at the Ministry of Foreign Affairs of the French Republic.

The functions of Secretary-General to the Conference were assumed by :

M. Eric Einar EKSTRAND, Director of the Opium Traffic and Social Questions Sections, representing the Secretary-General of the League of Nations.

In the course of a series of meetings between June 8th and June 26th, 1936, the instruments hereinafter enumerated were drawn up :

## I. CONVENTION OF 1936 FOR THE SUPPRESSION OF THE ILLICIT TRAFFIC IN DANGEROUS DRUGS.

### II. PROTOCOL OF SIGNATURE OF THE CONVENTION.

The Conference also adopted the following :

#### I. INTERPRETATIONS.

1. It is understood that the provisions of the Convention, and in particular the provisions of Articles 2 and 5, do not apply to offences committed unintentionally.

2. Article 15 is to be interpreted in the sense that the Convention does not in particular affect the liberty of the High Contracting Parties to regulate the principles under which mitigating circumstances may be taken into account.

#### II. RECOMMENDATIONS.

##### I. The Conference,

Recalling that the International Opium Conference of 1912, determined to bring about the gradual suppression of the abuse of opium, inserted in the International Opium Convention of 1912 the following Article 6 : " The contracting Powers shall take measures for the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium, with due regard to the varying circumstances of each country concerned, unless regulations on the subject are already in existence " ;

Recalling that the Parties to the Geneva Opium Agreement of 1925, in the Preamble, declared that they were fully determined to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium, as provided for in Chapter II of the International Opium Convention of 1912, in their Far Eastern possessions and territories, including leased or protected territories, in which the use of prepared opium is temporarily authorised ; and that they were desirous, on the grounds of humanity and for the purpose of promoting the social and moral welfare of their peoples, of taking all possible steps for achieving the suppression of the use of opium for smoking with the least possible delay ;

Desiring to take the opportunity afforded by the present Conference of urging the countries concerned to continue their efforts in this matter :

Recommends that Governments which still permit use of opium for other than medical or scientific purposes should without undue delay take effective action with a view to the abolition of such use of opium.

2. The Conference recommends that countries which recognise the principle of extradition of their nationals should grant the extradition of such of their nationals as, being in their territory, are guilty of the commission abroad of the offences dealt with in Article 2, even if the extradition treaty applicable contains a reservation on the subject of the extradition of nationals.

3. The Conference recommends the High Contracting Parties to create, where necessary, a specialised police service for the purposes of the present Convention.

4. The Conference recommends that the Advisory Committee on Traffic in Opium and Other Dangerous Drugs should consider the question whether it is desirable that meetings of the representatives of the central offices of the High Contracting Parties should take place in order to ensure, improve and develop international co-operation as provided for in the present Convention, and, should occasion arise, to give an opinion to the Council of the League of Nations on the subject.

EN FOI DE QUOI les Délégués ont signé le présent Acte.

IN FAITH WHEREOF the Delegates have signed the present Act.

Fait à Genève, le vingt-six juin mil neuf cent trente-six, en simple expédition, qui sera déposée dans les archives du Secrétariat de la Société des Nations; copie certifiée conforme en sera remise à tous les États représentés à la Conférence.

DONE at Geneva, the twenty-sixth day of June, one thousand nine hundred and thirty-six, in a single copy, which shall be deposited in the archives of the Secretariat of the League of Nations and of which authenticated copies shall be delivered to all States represented at the Conference.

*Le Président de la Conférence :*

*The President of the Conference :*

LIMBURG

*Le Vice-Président de la Conférence :*

*The Vice-President of the Conference :*

P. DE REFFYE

*Le Secrétaire général de la Conférence :*

*The Secretary-General of the Conference :*

Éric Einar EKSTRAND

AUTRICHE

AUSTRIA

E. PFLÜGL,  
Dr Bruno SCHULTZ

ÉTATS-UNIS DU BRÉSIL,

UNITED STATES OF BRAZIL

Jorge LATOUR

GRANDE-BRETAGNE  
ET IRLANDE DU NORD

GREAT BRITAIN  
AND NORTHERN IRELAND

ainsi que toutes parties de l'Empire  
britannique non membres séparés  
de la Société des Nations.

and all parts of the British Empire  
which are not separate Members of  
the League of Nations.

Oscar F. DOWSON  
Wm. H. COLKS

BULGARIE

BULGARIA

N. MONTCHILOFF  
E. SILIANOFF.

CANADA

CANADA

C. H. L. SHARMAN

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*International Criminal Police Commission*

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Pour le Secrétaire général :

Certified true copy.

For the Secretary-General :

*Conseiller juridique  
du Secrétariat.*

*Legal Adviser of the  
Secretariat.*

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## ABBREVIATIONS

Adv.	=	Advisory
Amend.	=	Amendment
Art.	=	Article
Comm.	=	Commission
Conf.	=	Conference
Conv.	=	Convention
Cttee.	=	Committee
Docts.	=	Documents
Govt.	=	Government
Int.	=	International
Obs.	=	Observations
Para.	=	Paragraph
U.S.A.	=	United States of America
U.S.S.R.	=	Union of Soviet Socialist Republics

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